DOCKET

No. 87-1848-CSX
Status: GRANTED

Title: City of Dallas, et al., Petitioners
v.
Charles M. Stanglin, Individually, and dba Twilight Skating Rink

Docketed:
May 11, 1988

Court: Court of Appeals of Texas, Fifth District

Counsel for petitioner: Dippel,Kenneth C., Hopkins,Craig

Counsel for respondent: Young,Richard E., Sheehan Jr.,Daniel J.

Entry	Date	Note	Proceedings and Orders
1	May 11 1988	G	Petition for writ of certiorari filed.
2	Jun 14 1988		DISTRIBUTED. June 29, 1988
3	Jun 28 1988	P	Response requested -- CJ, TM. (Due July 28, 1988)
5	Jul 22 1988		Waiver of right of respondent Charles Stanglin to respond filed.
4	Jul 25 1988		Lodging received.
6	Aug 3 1988		REDISTRIBUTED. September 26, 1988
7	Oct 3 1988		Petition GRANTED.
			**********
8	Oct 28 1988	G	Motion of petitioners to dispense with printing the joint appendix filed.
9	Nov 7 1988		Motion of petitioners to dispense with printing the joint appendix GRANTED.
10	Nov 14 1988		Record filed.
		*	Certified copy of original record received.
11	Nov 16 1988		Brief of petitioner City of Dallas filed.
12	Nov 17 1988		Brief amicus curiae of Natl. Institute of Municipal Law Officers filed.
13	Nov 17 1988	G	Motion of U.S. Conference of Mayors, et al. for leave to file a brief as amici curiae filed.
14	Dec 5 1988		Motion of U.S. Conference of Mayors, et al. for leave to file a brief as amici curiae GRANTED.
15	Dec 14 1988		Brief of respondent Charles M. Stanglin filed.
17	Jan 6 1989		SET FOR ARGUMENT WEDNESDAY, MARCH 1, 1989. (4TH CASE.)
16	Jan 10 1989		CIRCULATED.
18	Jan 18 1989	X	Reply brief of petitioners City of Dallas, et al. filed.
19	Mar 1 1989		ARGUED.

PETITION FOR WRIT OF CERTIORARI

87-1848

NO.

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

CITY OF DALLAS and BILLY PRINCE,
CHIEF OF POLICE

Petitioners,

vs

CHARLES M. STANGLIN Individually and
d/b/a/ Twilight Skating Rink,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS IN DALLAS

CARROLL R. GRAHAM
COUNSEL OF RECORD

CRAIG HOPKINS
ASSISTANT CITY ATTORNEY

CITY ATTORNEY'S OFFICE
1500 Marilla Street
7B North City Hall
Dallas, Texas 75201
214/670-3510

Attorneys For Petitioners

QUESTION PRESENTED FOR REVIEW

Does a municipality unconstitutionally restrict a minor's right of association by restricting entry to a "Class E" dance hall to persons aged fourteen through eighteen, their parents and employees of the hall?

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OPINIONS BELOW

Copies of Judgments, Orders and Opinions of the Courts below are included in the appendices hereto. A brief summary of those documents is included in the statement of the case, *infra*.

JURISDICTION

This petition seeks review of the October 29, 1987, judgment and opinion of the Court of Appeals for the Fifth

Judicial District of Texas at Dallas in Cause No. 05-86-01265-CV. The Texas Court of Appeals denied Petitioners' Motion for Rehearing on December 16, 1987. The Texas Supreme Court denied Writ of Error on March 2, 1988, and denied Rehearing April 6, 1988. The jurisdiction of this Court is invoked on the basis of 28 U.S.C. §1257(3) because Respondent claims a violation of rights arising under the Constitution of the United States.

The Texas Supreme Court denied Petitioners' application for rehearing by Order of that Court dated April 6, 1988. This petition is filed within 90 days of that date as required by 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISION AND ORDINANCE INVOLVED

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the Government for a redress of grievances.

Section 14-8.1 of the Dallas City Code Provides:

> PERSONS UNDER 14 AND OVER 18 PROHIBITED
>
> (a) No person under the age of 14 years or over the age of 18 years may enter a Class E dance hall.
>
> (b) A person commits an offense if he is over the age of 18 years and:
>
> (1) enters a Class E dance hall; or
>
> (2) for the purpose of gaining admittance into a Class E dance hall, he falsely represents himself to be:
>
> (A) of an age from 14 years through 18 years
>
> (B) a licensee or an employee of the dance hall;
>
> (C) a parent or guardian of a person inside the dance hall; or
>
> (D) a governmental employee in the performance of his duties.
>
> (c) A licensee or an employee of a Class E dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:
>
> (1) under the age of 14 years; or
>
> (2) over the age of 18 years.
>
> (d) It is a defense to prosecution under Subsections (b)(1) and (c)(2) that the person is:
>
> (1) a licensee or employee of the dance hall;
>
> (2) a parent or guardian of a person inside the dance hall; or
>
> (3) a governmental employee in the performance of his duties.

STATEMENT OF THE CASE

This is an action by a dance hall operator to enjoin the enforcement of Dallas City Code Sections 14-8.1 and 14-5(d) which relate respectively to the ages of patrons of the dance hall and to the hours of operation.

The action was tried on Motion for Temporary Injunction which hearing was subsequently considered by agreement as the final trial (Tr. P. 24). The final judgment adopted the finding of facts and conclusions of law filed with the Motion for Temporary Injunction as if there had been a final trial (Tr. P. 26).

At the trial court level, Respondent alleged violations of the due process and equal protection provisions of the United States Constitution, and the First and Fourteenth

Amendments. The trial court upheld Petitioner's ordinance (Appendix C). On appeal, Respondent further argued constitutional violations, and the Court of Appeals upheld the ordinance as to hours of operation but held that the age restriction violated minors' right of association (Appendix A).

REASONS FOR GRANTING THE WRIT

This cause concerns the ability of governmental entities to provide for the safety and welfare of children between the ages of fourteen and eighteen. Specifically, the issue is whether the City of Dallas may restrict entrance into a Class E dance hall to persons between the ages of fourteen and eighteen, their parents or guardians and employees of the dance hall. Clearly, it is within the purview of the State to so act.

The district court in this case was not the first to recognize the inherent characteristics of dance halls. Dance halls were specifically listed among "disreputable places" in one of this Court's cases concerning children's rights and the State's duty to protect their welfare. *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 88 L.Ed.2d 645, 64 S.Ct. 438 (1943). In *Prince* the Supreme Court upheld the conviction of persons who knowingly encouraged minors to sell or trade certain literature on the streets or public places. In discussing the distinctions to be recognized between what might be reasonable haunts for adults and unreasonable places for children, the Court wrote:

> . . . the mere fact that a state could not wholly prohibit this form of adult activity, whether characterized locally as a "sale" or otherwise, does not mean it cannot do so for children. Such conclusion granted would mean that a state could impose no

> greater limitation upon child labor than upon adult labor. Or, if an adult were free to enter *dance halls*, saloons, and *disreputable places* generally, in order to discharge his conceived religious duty to admonish or dissuade persons from frequenting such places, so would be a child with similar convictions and objectives, if not alone, then in the parent's company against the state's command. [Emphasis supplied.] 321 U.S. at 168.

This Court's recognition of the traditionally unsavory characteristics of dance halls was well established before *Prince* was decided. Public dance halls in our jurisprudence "have been regarded as being in that category of businesses and vocations having potential evil consequences, like traffic in intoxicating liquor, pool halls, pawnbroking, carnivals, and shows." E. McQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §24.210 (3d ed. 1981). *See also*, Annot., 48 A.L.R. 144 (1927); Annot., 60 A.L.R. 173 (1929).

Respondent, whose premises consist of a dance hall and skating rink, has complained that there appears to be a lack of "precision" in distinguishing between a dance hall and a skating rink. However, courts have recognized that arriving at precise definitions and answers is often difficult in defining and regulating the rights of minors. As recently as 1977, this Court agonized over just such an issue and noted that:

> The question of state power to regulate conduct of minors not constitutionally regulatable when committed by adults is a vexing one, perhaps not susceptible of precise answer. *Carey v. Population Services International*, 431 U.S. 678, 689, 52 L.Ed.2d 675, 97 S.Ct. 2010 (1977).

While Respondent has attempted to characterize the City's action as "irrational thinking," it more accurately reflects the difficulty of the issue involved and our courts'

reluctance to attempt to define "the totality of the relationship of the juvenile and the state." *Id.* at 689. The district court found that based upon the testimony of the witnesses at trial and "the very nature of dancing," there existed a rational basis for the City's age and hour restrictions on Class E dance halls.

Respondent has complained that there is no rational relationship between the ordinance and legitimate concerns and goals of the City. The City agrees that the ordinance must have rational relation to the object of the legislation. The testimony at trial indicated that the City was very careful in soliciting information from a variety of sources, including citizens, in drafting the new ordinance. (SF 52, 56, 76, 94). Respondent himself held discussions about the proposed ordinance with a member of the City Council. (SF 38). Until the development of the ordinance, children fourteen to eighteen had no access to any type of dance hall at any time without the presence of a parent or guardian.

The City's urban planner testified that the ordinance in question was an attempt to remove the requirement that the children be accompanied by their parent or guardian without leaving the kids open to the influence of older individuals; that the City has provided a venue for their free association with peers while safeguarding their well-being.

There was also testimony in the district court that the City's passage of the ordinance with its age and hour restrictions was to discourage juvenile crime and help prevent the exposure of juveniles to corrupting influences. (SF 97, 108-109). The State's concern with the prevention of crime is a long-standing concern and the special issue of juvenile crime has, of late, drawn more and more attention. Recently, this Court wrote:

> The "legitimate and compelling state interest" in protecting the community from crime cannot be doubted. We have stressed before that crime prevention is "a weighty social objective," and this interest persists undiluted in the juvenile context. The harm suffered by the victim of a crime is not dependent upon the age of the perpetrator. And the harm to society generally may even be greater in this context given the high rate of recidivism among juveniles. [Citations omitted.] *Schall v. Martin*, 467 U.S. 253, 264, 81 L.Ed.2d 207, 104 S.Ct. 2403 (1984).

Further, Justice Rehnquist noted the alarming statistics of juvenile crime which have garnered judicial attention:

> In 1982, juveniles under 16 accounted for 7.5 percent of all arrests for violent crimes, 19.9 percent of all arrests for serious property crime, and 17.3 percent of all arrests for violent and serious property crimes combined. U.S. Dept. of Justice, Federal Bureau of Investigation, Crime in the United States 176-177 (1982) ("Violent crimes" include murder, non-negligible manslaughter, forceable rape, robbery, and aggravated assault; "serious property crimes" include burglary, larceny-theft, motor vehicle theft, and arson). *Id.* n.14.

Then, Justice Powell further highlighted the importance of the vulnerability of children when he noted:

> "Adolescents everywhere, from every walk of life, are often dangerous to themselves and to others." The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 41 (1967). "[A]dolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self disciplined than adults." *Eddings v. Oklahoma*, 455 U.S. 104, 114, n.11, 71 L.Ed.2d 1, 102 S.Ct. 869 (1982).

As the district court noted:

> The City has not excluded children from dance halls at all times, but only after midnight. It has not prohibited all association of adults and children at dance halls, but only association of adults and children of certain ages. The City's urban planning and law enforcement experts have testified that these restrictions are the *only* really effective way of allowing young people to dance at dance halls and still protect them from detrimental influences there. [Emphasis supplied.] (Tr. p. 22).

The City's stated purposes for the ordinance were to allow children the opportunity for a supervised dance hall experience and at the same time protect them from detrimental influences associated with dance halls. (SF 76). Clearly, these are legitimate public concerns and as the testimony in the district court illustrates, the ordinance is rationally related to those governmental interests. (SF 54-55, 83-84, 90-91, 96-97, 108-109).

Notwithstanding the foregoing abundance of evidence that any test regarding rational relationship of the ordinance to a legitimate state interest was satisfied, the Court of Appeals held that the ordinance denied the constitutional right of association to the children. An examination of this Court's cases will conclusively demonstrate the contrary.

Since *Ginsberg v. New York*, 390 U.S. 629, 20 L.Ed.2d 195, 88 S.Ct. 1274 (1968), this Court has recognized the right of the State to protect children even where it results in a restriction of their rights. In *Ginsberg* the Court upheld a criminal conviction for selling sexually oriented magazines to a minor even though it was conceded that the First Amendment would have protected the same sale to an adult. During the course of the opinion the Court stated:

> It is enough for the purpose of this case that we inquire whether it was constitutionally impermissible for New York, insofar as §484-h does so, to accord minors under 17 a more restricted right than that assured to adults to judge and determine for themselves what sex material they may read or see. To sustain state power to exclude material defined as obscenity by §484-h requires only that we be able to say that it was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors.

Indeed this Court had previously recognized the authority of the State in regulating the conduct of children. In *Ginsberg, supra*, it stated:

> Even where there is an invasion of protected freedoms "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults. . . ." *Id.* at 638, quoting *Prince v. Massachusetts*, 321 U.S. 158, 170, 88 L.Ed.2d 645, 64 S.Ct. 438 (1944).

This Court again recognized the unique status of minors under the law in *Bellotti v. Baird*, 443 U.S. 622, 61 L.Ed.2d 797, 99 S.Ct. 3035 (1979). The ordinance at issue in this case is founded on at least two of the three principles espoused by Justice Powell in *Bellotti*, to wit:

1. the peculiar vulnerability of children; and
2. their inability to make critical decisions in an informed, mature manner. *Id.* at 634, 99 S.Ct. at 3043.

This Honorable Court recently decided a case similar to the instant case in which restrictions on the right of a child were sustained in a situation where such restrictions on an adult would not have been sustained. In the opinion for *Hazelwood School District, et al v. Cathy Kuhlmeier, et al,*

484 U.S. ___, 98 L.Ed. 592, 108 S.Ct. 562 (1988), this Court stated:

> We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings" and must be "applied in light of the special characteristics of the school environment." *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 92 L.Ed.2d 549, 106 S.Ct. 3159 (1986)

Petitioners do not attempt to equate a dance hall with a school, yet the principle espoused is the same — the children are in an environment with special characteristics, and regulation is both warranted and reasonable. Petitioners urge this Honorable Court to apply the reasoning utilized in *Hazelwood*, so that the children of Dallas may be protected from unsavory influences.

It is beyond dispute that the human nature of children ages fourteen to eighteen is that they admire and tend to uncritically accept the statements and conduct of young adults from approximately nineteen to thirty years of age. The young adults have the capacity and propensity to exert considerable influence over children ages fourteen to eighteen. Certainly the propensity for harming children is as great in this case as the propensity for harm involved in the *Ginsberg* case. Why should a fourteen year old at a dance be subjected to the influence of a twenty-five to thirty year old? How many times have we read newspaper accounts of the harm which occurs to minors while in the company of older scofflaws?

It should be borne in mind that the ordinance at issue does not seek to exclude parents, guardians or employees from their supervisory role at the Class E dance halls. The argument has been advanced that supervision is sufficient to

protect the minors from any potential harm. However, it cannot be shown that supervision will mitigate the harm to the children. The potential harm comes from the association with persons who may influence the behavior of the children not only at the dance hall (where supervision exists) but also away from the dance hall. As in *Ginsberg*, where the potential harm is not in the act of purchasing sexually oriented material, but in the influence it may have after the child is exposed to it, the potentially harmful influence here must also be kept from reaching the vulnerable child. Indeed, to believe that a fourteen or fifteen year old would forget everything they were exposed to at the dance hall merely by leaving the dance hall flies in the face of reason.

CONCLUSION

For the reason stated, Petitioners respectfully submit that this Application for Writ of Certiorari should be granted, and that the Supreme Court should reverse the judgment of the Court of Appeals for the Fifth Supreme Judicial District of Texas, Dallas, Texas, to the extent it does not comport with the judgment of the trial court, and sustain the judgment of the 95th Judicial District Court of Dallas County, Texas, rendering judgment that Plaintiff take nothing, or, in the alternative, granting Petitioners a new trial.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS
City Hall 7BN
1500 Marilla Street
Dallas, Texas 75201
(214) 670-3510

By /s/ CARROLL R. GRAHAM
Carroll R. Graham
Counsel of Record
Assistant City Attorney
State Bar of Texas No. 08257000

By /s/ CRAIG HOPKINS
Craig Hopkins
Assistant City Attorney
State Bar of Texas No. 09972050

Attorneys for Petitioners
CITY OF DALLAS AND BILLY PRINCE

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-86-01265-CV

CHARLES M. STANGLIN,
Individually and D/B/A
TWILIGHT SKATING RINK,

Appellant,

v.

CITY OF DALLAS and
BILLY PRINCE,
Chief of Police,

Appellees.

FROM A DISTRICT COURT
DALLAS COUNTY, TEXAS

BEFORE JUSTICES HOWELL,
STEWART, AND THOMAS
OPINION BY JUSTICE HOWELL
OCTOBER 29, 1987

Plaintiff, Charles M. Stanglin, brought this action to contest the validity of an ordinance regulating the operation of dance halls expressly catering to a juvenile clientele. The trial court denied relief. Finding the age limit portion of the ordinance unconstitutional as applied to plaintiff Stanglin, we reverse and enjoin its enforcement. We uphold the restriction on hours of operation.

Plaintiff operates the Twilight Skating Rink in the City of Dallas. It has been subject only to minimal regulation by the City. On the other hand, the City has strictly regulated dance halls for many years. In general, such places have been off-limits to persons of high-school or junior-high school age. In order to allow the operation of premises where persons of younger age might dance, the City authorized the licensing of "Class E" dance halls, and plaintiff obtained such a license. He divided the floor of his skating rink with moveable plastic cones or pylons, the same as used on streets to direct traffic around collisions and construction areas. On one side of the pylons, his patrons dance; on the other side, they skate, all to the same music and all in full view of one another.

The ordinance regulating Class E dance halls forbids anyone other than persons between fourteen and eighteen years of age to dance, or even be present therein — parents, guardians, law enforcement and operating personnel are excepted. In addition, Class E dance halls may not open until after school hours and must close at midnight.[1] No such restrictions apply to plaintiff's roller skating operations. Plaintiff attacks the constitutionality of restricting his dance hall operations more than his roller skating operations.

---

[1]PERSONS UNDER 14 AND OVER 18 PROHIBITED:

(a) No person under the age of 14 years or over the age of 18 years may enter a Class E dance hall.

(b) A person commits an offense if he is over the age of 18 years and:

(1) enters a Class E dance hall; or

(2) for the purposes of gaining admittance into a Class E dance hall, he falsely represents himself to be:

(a) of an age from 14 years through 18 years;

(b) a licensee or an employee of the dance hall;

(c) a parent or guardian of a person inside the dance hall; or

(d) a governmental employee in the performance of his duties.

The Twilight is generally well-operated. The management prohibits the use of alcohol and drugs on the premises, congregating outside the building, altercations, reckless conduct, and sexual contact. Security officers are present at all times. Although the Twilight's increased popularity has prompted complaints about excessive traffic, the use or sale of drugs and other illicit and offensive conduct, the trial court found (and neither party disputes) that the police have controlled these problems without significant difficulty. The trial court also found, without dispute, that enforcement of the ordinance's age and hour restrictions against the Twilight is likely to result in a loss of business and profit for plaintiff.

One of plaintiff's challenges is that the ordinance unconstitutionally infringes on the right of children between ages fourteen and seventeen[2] to associate with others outside

---

(c) A licensee or an employee of a Class E dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:

(1) under the age of 14 years; or

(2) over the age of 18 years.

(d) It is a defense to prosecution under Subsections (b)(1) and (c)(2) that the person is:

(1) a licensee or employee of the dance hall;

(2) a parent or guardian of a person inside the dance hall; or

(3) a governmental employee in the performance of his duties.

DALLAS CITY CODE § 14-8.1.

HOURS OF OPERATION

* * *

(d) A person commits an offense if he operates a Class E dance hall during any hours other than the following:

* * *

(2) When school is not in session in the school district in which the dance hall is located, between the hours of 1:00 P.M. and 12:00 midnight, Monday through Sunday.

DALLAS CITY CODE § 14-5(d).

[2]The parties argued at trial and the court concluded that the age limit in the ordinance was seventeen years of age. The ordinance, however, applies to "persons under 14 and over 18."

such age bracket. Because plaintiff is among the vendors, and those in like position, whom the courts uniformly have permitted "to resist efforts at restricting their operations by acting as advocates for the rights of third parties who seek access" to the services they provide, plaintiff is entitled to assert "those concomitant rights of third parties that would be 'diluted or adversely affected' should [his] constitutional challenge fail." *Carey v. Population Services International*, 431 U.S. 678, 683-84 (1977) (citations omitted). Thus, plaintiff has standing to assert the rights of those whom the ordinance most directly seeks to regulate.

The First Amendment right of association is fundamental, *NAACP v. Button*, 371 U. S. 415, 430 (1963), and is "an inseparable aspect of the 'liberty' assured by the due process clause of the Fourteenth Amendment." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). The right to freely associate is not limited to "political" assemblies, but includes those that "pertain to the *social*, legal, and economic benefit" of our citizens. *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965) (emphasis added).

The U.S. Court of Appeals for the Fifth Circuit has held that social association, even on street corners, is constitutionally protected. *Sawyer v. Sandstrom*, 615 F.2d 311, 317 (5th Cir. 1980). To justify a restriction of this fundamental right, the legislative body must show a compelling interest. *Sotto v. Wainwright*, 601 F.2d 184, 191 (1979), *cert. denied*, 445 U.S. 950 (1980). An ordinance that affects the fundamental right of association must not unnecessarily restrict constitutionally protected activity; regulation where necessary or proper must be accomplished by the least restrictive means. *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029, 1042 (5th Cir. 1980), *rev'd in part and remanded on other grounds*, 455 U.S. 283 (1982), *on reh'g*, 713 F.2d 137 (5th Cir. 1983).

Minors are "persons" under the Constitution, *Tinker v. Des Moines Independent Community School Dist.*, 343 U.S. 503, 511 (1969), and are protected by the Bill of Rights and the Fourteenth Amendment, *In re Gault*, 387 U.S. 1, 13

(1967). Thus, the right of children to associate freely, like that of adults, includes association for social purposes. *Johnson v. City of Opelousas*, 658 F.2d 1065, 1072 (5th Cir. 1981).

Of course, the state's power to control the conduct of children "reaches beyond the scope of its authority over adults . . ." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944). However, the state's broader authority to regulate children's activities may be exercised only "if a special circumstance of youth creates a unique danger to minors [that] presents the state with an interest in regulating their activities that does not exist in the case of adults." *Aladdin's Castle*, 630 F.2d at 1042. Restrictions on minors that would be unconstitutional when applied to adults may pass constitutional muster if they serve a "significant state interest . . . that is not present in the case of an adult." *Planned Parenthood v. Danforth*, 428 U.S. 52, 75 (1976).

Defendant City contends that the challenged ordinance represents a carefully tailored mechanism designed to protect minors from detrimental, corrupting influences.[3] Certainly, the state, or its municipal subsidiaries, may restrict the activities of minors in a manner that limits their presence around or access to alcohol, drugs and sexually oriented behavior. *See, e.g., Ginsberg v. New York*, 390 U.S. 629 (1968) (state statute prohibiting sale of sexually oriented magazines to minors under age seventeen held constitutional). However, "a governmental purpose to control or prevent activities [that are] constitutionally subject to state regulation may not be achieved by means [that] sweep unnecessarily broadly and thereby invade the area of protected freedoms." *NAACP v. Alabama*, 377 U.S. 288, 307 (1964).

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[3]Ray Couch, an urban planner for defendant City's Department of Planning and Development, testified that "older kids [whom the ordinance prohibits from entering Class E dance halls] can access drugs and alcohol, and they have more mature sexual attitudes, more liberal sexual attitudes in general . . . And we're concerned about mixing up these [older] individuals with youngsters that [sic] have not fully matured."

Defendant City's stated purposes in enacting the challenged ordinances may be achieved in ways that are less intrusive on minors' freedom to associate. The most direct means of protecting juveniles from detrimental influences is to apprehend and prosecute those who induce them to engage in illegal behavior, such as the unauthorized use of drugs and alcohol. Education and punishment are the usual deterrents of crime, "not abridgement of the right[] of . . . assembly." *Whitney v. California*, 274 U.S. 357, 358 (1927) (Brandeis, J., concurring). Indeed, the court below found that the police have handled problems with drug sales and use, and other offensive and illicit conduct, in the area of the Twilight without significant difficulty. Thus, the ordinances challenged by plaintiff sweep more broadly than is necessary to accomplish their underlying purposes, especially in light of the extent to which they restrict the right of association. *See Aladdin's Castle*, 630 F.2d at 1047.

It is true that an ordinance may be constitutionally permissible as applied to children, if it is designed to accommodate "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; [or] the importance of the parental role in child rearing." *Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (Powell, J., plurality opinion). However, none of these considerations justify the overbreadth of Section 14-8.1 of the ordinance before us. A child's right of association may not be abridged simply on the premise that he "might" associate with those who would persuade him into bad habits. If a sweeping test of this nature be established, the associational rights of minors will be drastically impinged upon. *See id.*

Defendant City argues that the ordinance compensates for children's unique vulnerability to the detrimental influences of those whom the ordinance excludes from Class E dance halls, and that it is thus entitled to "adjust its legal system to account for [the] children's vulnerability . . . " *Id.* at 635 (citing *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (1971)). However, we conclude that neither the activity of dancing *per se*, nor association of children aged fourteen through eighteen with persons of other ages in the context

of dancing renders such children peculiarly vulnerable to the evils that defendant City seeks to prevent. The answer lies in supervision, not in strict segregation by age group. There is no showing that the less restrictive means of supervision will be ineffectual to control the evil perceived in allowing, say a twenty-year-old, from entering the premises and peaceably and consensually dancing with a fourteen-year-old.

Although defendant City's desire to shape the sexual attitudes and mores of its minor citizens may be well-motivated, legislation in the name of "children's peculiar vulnerability" is not justified. "Associations cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them." *Aladdin's Castle*, 630 F.2d at 1043 (quoting *Erzoznik v. City of Jacksonville*, 422 U.S. 205, 213-14 (1975)).

Neither can this section of the ordinance be justified on the basis of children's "inability to make critical decisions in an informed, mature manner." The City's expert testified that "[s]ometimes these, these youngsters are very immature and we're not sure that they can exercise good judgment in all cases when they are intermingled with those older individuals in a setting where you have dancing and . . . lots of music." Although certain children between ages fourteen and eighteen may be "very immature," they are nevertheless permitted to express their views on controversial public issues, *e.g.*, *Tinker*, 393 U.S. at 503 (children permitted constitutionally to express their views on the Vietnam war by wearing armbands to school as a symbol of protest), and to secure abortions without parental consent. It would be incongruous to permit children to make such critical decisions while forbidding them from choosing dance partners over the age of eighteen.

We further conclude that this section of the ordinance inhibits, rather than promotes, the parental role in child-rearing. It is primarily the responsibility of the parent, not the City, to tell the minor how old his dance partner may be. At the same time, we recognize that the rights of parents to

control the rearing of their children is not exclusive. *See Prince*, 321 U.S. at 166 nn. 9-12 (the state as *parens patriae* may restrict rights of parenthood in various ways in order to guard the general interest in youths' well-being). We hold that the right of defendant City to restrict the associational rights of children must primarily be limited to the protection from criminal influence. The City's *parens patriae* interest does not justify it in removing from parents the decision as to the age of persons with whom their children may or should associate. *See City of Opelousas*, 658 F.2d at 1074.

We find that portion of the ordinance fixing hours of operation to be constitutional. The law is well established that dance halls are the proper subject for reasonable regulation wherever a municipality has been granted the authority to exercise its police powers over such activities. *See Bielecki v. Port Arthur* 2 S.W.2d 1001 (Tex. Civ. App. — Beaumont 1928), *rev'd on other grounds*, 12 S.W.2d 976 Tex. 1929); *See also, Ex parte Bell* 32 Tex. Crim. 308, 22 S.W. 1040 (1893).

A municipality may prohibit dancing after certain hours in a restaurant. Such regulation has been held within the valid exercise of police powers delegated to a city. *See Chicago v. Green Mill Gardens*, 305 Ill. 87, 137 N.E. 126 (1922).

The infringement upon associational rights is minimal. Therefore, we apply the rational basis test to determine if there is a legitimate public purpose in the restriction of these operating hours based on the promotion of the public welfare, health or safety. *See Aladdin's Castle* 630 F.2d at 1039. Here, the city planner, Couch, testified about three reasons for and the purpose of regulating business hours: (1) to safeguard the well being of the young people, (2) to consider the uses of the surrounding neighborhood and residential areas; (3) to properly supervise children by having a convenient hour for parents to pick up their children from dancing. We conclude there is a rational relationship to the reasons articulated by the City of Dallas in seeking to regulate the operating hours of a Class E dance hall.

We hold Section 14-8.1 of the ordinance placing an age limit on patrons to be unconstitutional as applied to the operations of plaintiff Stanglin and enjoin its enforcement. We hold that Section 14-5(d) restricting hours of operation is constitutional.

REVERSED in part and RENDERED; AFFIRMED in part.

/s/ CHARLES BEN HOWELL

Charles Ben Howell
Justice

PUBLISH

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-86-01265-CV

CHARLES M. STANGLIN,
Individually and D/B/A
TWILIGHT SKATING RINK,

Appellant,

v.

CITY OF DALLAS and
BILLY PRINCE,
Chief of Police,

Appellees.

JUDGMENT

In accordance with the Court's opinion of this date, the trial court's judgment in favor of appellees, City of Dallas and Billy Prince, Chief of Police, is AFFIRMED in part and REVERSED in part and RENDERED as follows: Appellees, City of Dallas and Billy Prince, Chief of Police, are hereby permanently enjoined from enforcing against appellant, Charles M. Stanglin, section 14-8.1 of the Dallas City Code of Ordinances.

It is ORDERED that appellant, Charles M. Stanglin, recover his costs of this appeal from appellees, City of Dallas and Billy Prince, Chief of Police. The obligations of

appellant, Charles M. Stanglin, and of appellant's sureties, Nell Sims and Charles L. Stanglin, under the cost bond are discharged. All other relief requested by appellant is denied.

October 29, 1987.

/s/ CHARLES BEN HOWELL
Charles Ben Howell
Justice

No. 86-8546-D

CHARLES M. STANGLIN,
Individually and d/b/a
TWILIGHT SKATING RINK

v.

CITY OF DALLAS and
BILLY PRINCE,
Chief of Police

IN THE DISTRICT COURT OF
DALLAS COUNTY, TEXAS
95TH JUDICIAL DISTRICT

MEMORANDUM OPINION AND ORDER

Plaintiff Charles M. Stanglin petitions the Court for a declaration that certain Dallas City Code provisions regulating dance halls violate the due process and equal protection provisions of the United States Constitution, amendments 1 and 14, and the Texas Constitution, article I, sections 3 and 19, and an injunction prohibiting the City from enforcing those provisions.

The Court heard Stanglin's application for temporary injunction on July 8, 1986. All parties appeared by counsel and presented evidence and argument. For reasons that follow, the Court has concluded that Stanglin's application must be denied.

I

The following material facts are not in controversy. Stanglin operates the Twilight Skating Rink in the City of Dallas. The Twilight has both a skating rink and a dance hall under the same roof, separated only by pylons on the floor.

The City regulates dance halls. The Twilight holds a Class E license, permitting dancing seven days a week for persons from age 14 through age 17 only. Dallas City Code § 14-1(6). The Code regulates the hours of operation and the age of

patrons in Class E dance halls. Specifically, section 14-5(d) provides:

> HOURS OF OPERATION
>
> . . .
>
> (d) A person commits an offense if he operates a Class E dance hall during any hours other than the following:
>
> . . .
>
> (2) when school is not in session in the school district in which the dance hall is located, between the hours of 1:00 p.m. and 12:00 midnight, Monday through Sunday.

Section 14-8.1 provides:

> PERSONS UNDER 14 AND OVER 17 PROHIBITED.
>
> (a) No person under the age of 14 years or over the age of 17 years may enter a Class E dance hall.
>
> (b) A person commits an offense if he is over the age of 17 years and:
>
> (1) enters a Class E dance hall; or
>
> (2) for the purpose of gaining admittance into a Class E dance hall, he falsely represents himself to be:
>
> (A) of an age from 14 years through 17 years;
>
> (B) a licensee or an employee of the dance hall;
>
> (C) a parent or guardian of a person inside the dance hall; or
>
> (D) a governmental employee in the performance of his duties.
>
> (c) A licensee or an employee of a Class E dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:

> (1) under the age of 14 years; or
>
> (2) over the age of 17 years.
>
> (d) It is a defense to prosecution under Subsections (b)(1) and (c)(2) that the person is:
>
> (1) a licensee or employee of the dance hall;
>
> (2) a parent or guardian of a person inside the dance hall; or
>
> (3) a governmental employee in the performance of his duties.

A violation of these sections is punishable by a fine up to $1,000, Dallas City Code § 14-12, and suspension of the license, Dallas City Code § 14-10.

No hour or age restrictions apply to the Twilight's skating rink. Skaters older than 17 and younger than 14 may be admitted, and the rink may be open after 12:00 p.m.

The Twilight is generally well operated. There are rules for skating and dancing. The same music is used for both. Use of alcohol and drugs on the premises, congregating outside the building, altercations, reckless conduct and sexual contact are all strictly prohibited. Security officers are present at all times.

Places like the Twilight, so-called "teen clubs", are a current fad among young people, "in" places to be. The popularity of the Twilight in the past several months has resulted in complaints from its neighbors about excessive traffic, trespassers, drug sales and use, and other offensive and illicit conduct. The police have handled these problems without significant difficulty. The neighbors, however, remain concerned.

Enforcement of the hour and age restrictions against the Twilight is likely to result in a loss of business and profit for which it will not an adequate remedy.

Stanglin contends that the City's age and hour restrictions on Class E dance halls are arbitrary and have no

rational basis in any legitimate public purpose, are overbroad and unnecessarily restrictive of constitutional freedoms of association and child-rearing, and are discriminatory.

A

Assuming, as all parties here do, that under both the United States and Texas Constitutions the City's age and hour restrictions on Class E dance halls must meet the same rational basis test, those restrictions first must have as their goal the legitimate concern of promoting public welfare, health or safety, and second must be rationally related to that goal. *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980), *rev'd in part on other grounds and remanded*, 455 U.S. 283 (1982), *opinion on remand*, 713 F.2d 137, 138 n.2 (5th Cir. 1983).

The first requirement of the rational basis test is met: Stanglin acknowledges that the City's legitimate concern underlying the age and hour restrictions on dance halls is the safety and welfare of its children. Stanglin vigorously disputes, however, that the restrictions imposed by the City are rationally related to its legitimate concern.

The City does not impose age and hour restrictions on skating rinks, sporting events, concerts and other public activities attended by both children and adults. Stanglin admits that the City may address problems in an orderly manner, and the mere fact that one activity is restricted and another is not does not alone signal an arbitrary distinction. Stanglin argues, however, that it is arbitrary for the City to restrict operation of a dance but not a skating rink on the same premises attended by the same patrons under essentially the same circumstances. In short, Stanglin argues that the City distinguishes between dancing and other activities like skating without any good reason for doing so.

The City has not articulated a precise basis for distinguishing between dancing and skating, leading Stanglin to

insist that no such rational distinction exists. The City's argument that noise levels are higher, traffic worse, neighborhood disruption greater, and alcohol and drug abuse more a problem at dance halls than skating rinks has no real factual support. But while the City has difficulty defining the distinction between dancing and other activities like skating, its witnesses experienced in urban planning and law enforcement agree that a distinction exists to support the age and hour restrictions in issue.

The City's difficulty in defining this distinction does not detract from its reality. The rational basis test does not require the City to explain *how* activities differ so as to warrant or not warrant regulation. The test is met if the City simply proves *that* a difference exists, however difficult it may be to explain, and that a rational relationship exists between restriction and goal. The explanation may lie in the very nature of dancing and skating. Soccer and cricket, for example, alike in that they are both publicly attended sporting events, appear to present very different crowd control problems because of the very different nature of the sports obvious to even a casual observer. Skating and dancing, alike in some respect, are nevertheless obviously very different activities, as the Twilight's patrons themselves recognize in choosing between them. The City has concluded from the expertise available to it that dancing halls present problems that skating rinks do not, problems not merely imagined by arbitrary or prejudiced legislators, but problems that have actually occurred. The City has addressed these problems with restrictions necessary for dancing and unnecessary for skating. From the testimony presented the Court concludes that it is unlikely that Stanglin will be able to establish at trial on the merits the lack of a rational basis for the City's age and hour restrictions on Class E dance halls.

Stanglin argues that it is irrational to draw a line between 17- and 18-year-olds, or between 12- and 13-year-olds. Again, however, difficulty in precisely defining lines does not mean that no lines exist. Thus, Stanglin does not argue that it is arbitrary to restrict 12-year-olds from dancing with 18-year-olds. The City's age categories are reasonable.

B

Stanglin argues that the City's age and hour restrictions on Class E dance halls are overbroad, impermissibly encroaching on constitutionally protected freedoms of association and child-rearing. In essence, Stanglin argues that the City's legitimate concern for the welfare and safety of children can be met by other less restrictive means. Stanglin does not, however, suggest what these other means should be.

The City has not excluded children from dance halls at all times, but only after midnight. It has not prohibited all association of adults and children at dance halls, but only association of adults and children of certain ages. The City's urban planning and law enforcement experts have testified that these restrictions are the only really effective way of allowing young people to dance at dance halls and still protect them from detrimental influences there. In the face of this testimony, it is unlikely that Stanglin will prove at trial that the restrictions he complains of are overbroad.

C

Stanglin also suggests that the City's age and hour restrictions on Class E dance halls may fall more heavily on blacks and thus constitute an impermissible discrimination on the basis of race. The evidence at the temporary injunction hearing simply does not support Stanglin's argument.

D

Stanglin argues that the age restrictions on Class E dance halls are impossible to enforce because a minor usually does not carry identification reflecting his age. However, section 14-8.1 does not prohibit allowing a person outside the age range to enter the dance hall, but *knowingly* doing so.

III

Inasmuch as the Court has concluded that it is unlikely that Stanglin will prevail upon the merits of its claims at trial,

IT IS ORDERED that Stanglin's application for temporary injunction must be denied, and trial on the merits set for October 27, 1986, at 9:00 a.m.

Signed: September 1, 1986.

/s/ NATHAN L. HECHT
DISTRICT JUDGE

No. 86-8546-D

CHARLES M. STANGLIN,
Individually and d/b/a
TWILIGHT SKATING RINK
Plaintiff,

v

CITY OF DALLAS and
BILLY PRINCE,
Chief of Police
Defendant.

IN THE DISTRICT COURT
95TH JUDICIAL DISTRICT
DALLAS COUNTY, TEXAS

FINAL JUDGMENT

On the 3rd day of November, 1986 the parties appeared through their respective attorneys of record by signing and filing a Stipulation of Facts and Judgment. The court after considering the pleadings, the stipulation, and the evidence and argument of counsel presented at the temporary injunction hearing, is of the opinion that the following judgment should be entered:

It is ORDERED that the hearing held on the 8th day of July, 1986, the temporary injunction hearing is hereby consolidated with and deemed to have been a final trial on the merits in this action, pursuant to this Stipulation.

It is further ORDERED that the findings of facts and conclusions of law signed by the court on the 1st day of September, 1986 are hereby adopted as the findings of facts and conclusions of law after a trial on the merits.

It is further ORDERED, ADJUDGED and DECREED, that all of Plaintiff's claims against Defendants for

injunctive relief and other relief is hereby denied.

All costs are taxed against Plaintiff.

All relief not expressly granted or denied herein is denied.

Signed the 7th day of November, 1986.

/s/ NATHAN L. HECHT
Judge Presiding

AGREED AS TO FORM:

SHEEHAN, YOUNG, SMITH & CULP
2001 Bryan Tower, Suite 2880
Dallas, Texas 75201

By: /s/ RICHARD E. YOUNG
Richard E. Young
Counsel for Plaintiff

Office of the City Attorney
City of Dallas, Texas
7BN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201

By: /s/ SOL VILLASANA
Sol Villasana
Counsel for Defendants

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-86-01265-CV

CHARLES M. STANGLIN,
individually and d/b/a
TWILIGHT SKATING RINK,

Appellant,

v.

CITY OF DALLAS and
BILLY PRINCE,
Chief of Police,

Appellees.

ORDER

The November 13, 1987 Motion for Rehearing filed by appellant Charles M. Stanglin, individually and d/b/a Twilight Skating Rink and the November 12, 1987 Motion for Rehearing filed by appellees City of Dallas and Billy Prince, Chief of Police, are hereby OVERRULED.

December 16, 1987.

/s/ CHARLES BEN HOWELL
Charles Ben Howell
Justice

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

March 2, 1988

Mr. Carroll R. Graham
City Attorney's Office
7BN Dallas City Hall
1500 Marilla Street
Dallas TX 75201

Mr. Richard E. Young
Sheehan, Young, Smith & Culp
2001 Bryan Tower
Suite 2880
Dallas TX 75201

RE: Case No. C-7182

STYLE: CITY OF DALLAS ET AL.
v. CHARLES M. STANGLIN, individually
and d/b/a TWILIGHT SKATING

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, Writ Denied.

Respectfully yours,

Mary M. Wakefield, Clerk

By /s/ BLANCA E. MORIN
Deputy

F-1

SUPREME COURT OF TEXAS
P.O. Box 12248
Supreme Court Building
Austin, Texas 78711
Mary M. Wakefield, Clerk

April 6, 1988

Mr. Carroll R. Graham
City Attorney's Office
7BN Dallas City Hall
1500 Marilla Street
Dallas TX 75201

Mr. Richard E. Young
Sheehan, Young, Smith & Culp
2001 Bryan Tower
Suite 2880
Dallas TX 75201

Ms. Ann M. Drumm
Sheehan, Young, Smith & Culp
2001 Bryan Tower
Suite 2880
Dallas TX 75201

RE: Case No. C-7182

STYLE: CITY OF DALLAS ET AL.
v. CHARLES M. STANGLIN, individually
and d/b/a TWILIGHT SKATING

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of

error in the above styled case. Respondent's motion to withdraw as attorney of record is overruled

Respectfully yours,

Mary M. Wakefield, Clerk

By /s/ BLANCA E. MORIN
Deputy

PETITIONER'S

BRIEF

NO. 87-1848

In The

Supreme Court Of The United States

OCTOBER TERM, 1988

CITY OF DALLAS and BILLY PRINCE,
CHIEF OF POLICE,
Petitioners,

vs

CHARLES M. STANGLIN, Individually and
d/b/a / TWILIGHT SKATING RINK,
Respondent.

ON WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS IN DALLAS

PETITIONERS' BRIEF ON THE MERITS

ANALESLIE MUNCY
CITY ATTORNEY

KENNETH C. DIPPEL
COUNSEL OF RECORD
FIRST ASSISTANT CITY ATTORNEY

CRAIG HOPKINS
ASSISTANT CITY ATTORNEY

CITY ATTORNEY'S OFFICE
1500 Marilla Street
7B North City Hall
Dallas, Texas 75201
214/670-3510

Attorneys For Petitioners

QUESTION PRESENTED FOR REVIEW

Does a municipality unconstitutionally restrict a minor's right of association by restricting entry to a "Class E" dance hall to persons aged fourteen through eighteen, their parents and employees of the hall?

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TABLE OF AUTHORITIES

In The

Supreme Court Of The United States

OCTOBER TERM, 1988

NO. 87-1848

CITY OF DALLAS and BILLY PRINCE,
CHIEF OF POLICE,

Petitioners,

vs

CHARLES M. STANGLIN, Individually and
d/b/a / TWILIGHT SKATING RINK,

Respondent.

ON WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS IN DALLAS

PETITIONERS' BRIEF ON THE MERITS

OPINIONS BELOW

Copies of Judgments, Orders and Opinions of the courts below are included in the appendices to the Petition for Writ of Certiorari. A brief summary of those documents is included in the statement of the case, *infra.*

The only published lower court opinion in this case is *Stanglin vs. City of Dallas,* 744 S.W.2d 165 (Tex.Civ.App.-Dallas, 1987).

JURISDICTION

This Court has granted Petitioners' request for review of the October 29, 1987, judgment and opinion of the Court of

Appeals for the Fifth Judicial District of Texas at Dallas in Cause No. 05-86-01265-CV. The Texas Court of Appeals denied Petitioners' Motion for Rehearing on December 16, 1987. The Texas Supreme Court denied Writ of Error on March 2, 1988, and denied Rehearing April 6, 1988. The petition was filed within 90 days of that date as required by 28 U.S.C. §2101(c). Certiorari was granted October 3, 1988, and this Brief on the Merits is filed within 45 days from October 3, 1988. The jurisdiction of this Court is invoked on the basis of 28 U.S.C. §1257(3) because Respondent claims a violation of rights arising under the Constitution of the United States. By order entered November 7, 1988, the Court dispensed with the requirement for filing a Joint Appendix.

CONSTITUTIONAL PROVISION AND ORDINANCE INVOLVED

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 14-8.1 of the Dallas City Code Provides:

> PERSONS UNDER 14 AND OVER 18 PROHIBITED
>
> (a) No person under the age of 14 years or over the age of 18 years may enter a Class E dance hall.
>
> (b) A person commits an offense if he is over the age of 18 years and:
>
> (1) enters a Class E dance hall; or
>
> (2) for the purpose of gaining admittance into a Class E dance hall, he falsely represents himself to be:
>
> (A) of an age from 14 years through 18 years.

> (B) a licensee or an employee of the dance hall;
>
> (C) a parent or guardian of a person inside the dance hall; or
>
> (D) a governmental employee in the performance of his duties.
>
> (c) A licensee or an employee of a Class E dance hall commits an offense if he knowingly allows a person to enter or remain on the premises of the dance hall who is:
>
> (1) under the age of 14 years; or
>
> (2) over the age of 18 years.
>
> (d) It is a defense to prosecution under Subsections (b)(1) and (c)(2) that the person is:
>
> (1) a licensee or employee of the dance hall;
>
> (2) a parent or guardian of a person inside the dance hall; or
>
> (3) a governmental employee in the performance of his duties.

STATEMENT OF THE CASE

This is an action by a dance hall operator to enjoin the enforcement of Dallas City Code Sections 14-8.1 and 14-5(d) which relate respectively to the ages of patrons of the dance hall and to the hours of operation of the dance hall. The Court of Appeals upheld §14-5(d) and it is no longer at issue.

The action was tried on Motion for Temporary Injunction which hearing was subsequently considered by agreement as the final trial (Tr. P. 24). The final judgment adopted the finding of facts and conclusions of law filed with the Motion for Temporary Injunction as if there had been a final trial (Tr. P. 26).

At the trial court level, Respondent alleged violations of the due process and equal protection provisions of the United States Constitution, and the First and Fourteenth Amendments. The trial court upheld Petitioner's ordinance (Appendix C to the petition for Writ of Certiorari). On appeal, Respondent further argued constitutional violations, and the Court of Appeals upheld the ordinance as to hours of operation but held that the age restriction violated minors' right of association (Appendix A to the petition for Writ of Certiorari). It is the age restriction which is at issue before this Court.

SUMMARY OF ARGUMENT

It is Petitioners' position that the City of Dallas has a sufficient interest in protecting its adolescent citizens from corrupting influences so as to justify enacting §14-8.1 of the Dallas City Code. The ordinance restricting patrons of the dance hall to ages 14 through 18 is narrowly tailored to address the concerns of citizens and parents regarding teen dance halls.

Initially, Petitioners contend that there is no constitutional right involved in this case. The lower court found that Dallas' ordinance infringed on minors' freedom of association. However, the Texas Court of Appeals failed to apply the principles espoused by this Court regarding when associational freedom is protected, and when it is not.

This case does not involve "intrinsic personal liberties" or "instrumental association" for the purpose of expressing, for example, political or religious viewpoints. Because this case does not involve either of the circumstances where this Court has found a protected right of association, the ordinance is a valid regulation of teen dance halls.

Even assuming that a protected freedom is involved here, there is no infringement because the ordinance is a narrowly tailored, rational means of achieving the legitimate goal of protecting children and preventing juvenile crime.

This Court has indicated that the "rational-basis" standard of review is appropriate where, as here, there is no substantial interference with a constitutionally protected right. Yet, even utilizing the higher standard of review which requires a compelling state interest, the Dallas ordinance withstands scrutiny. This is so because the protection of adolescents and prevention of juvenile crime has long been recognized as a compelling state interest. The vulnerability and impressionability of adolescents, when coupled with the influence of 19 to 30 year olds at a dance hall, clearly exhibits the need for this regulation.

The City has not attempted to supplant parental supervision, but has made an effort to give them the support of the law where their supervision may by unavailable or inadequate. It is the City's goal to narrowly tailor regulation of places where the atmosphere is conducive to older scofflaws exerting their "adult" influences and practices on impressionable young people.

ARGUMENT

This cause concerns the ability of governmental entities to provide for the safety and welfare of children between the ages of fourteen and eighteen. Specifically, the issue is whether the City of Dallas may restrict entrance into a Class E dance hall to persons between the ages of fourteen and eighteen, their parents or guardians and employees of the dance hall. Clearly, it is within the purview of the City to so act.

I. THIS CASE DOES NOT INVOLVE INFRINGEMENT OF A CONSTITUTIONALLY PROTECTED RIGHT OF ASSOCIATION

Recently, this Court has considered the issue of freedom of association, whether in the juvenile or adult context. In *Roberts v. United States Jaycees*, 468 U.S. 609, 82 L.Ed.2d 462, 104 S.Ct. 3244 (1984), Justice Brennan wrote the opinion for the Court in which Justices Rehnquist, White, Marshall, Stevens and O'Connor concurred. In that opinion, the Court identified two distinct categories of the constitutionally protected freedom of association which were called "intrinsic" and "instrumental." The former exists in the choice to enter into and maintain intimate human relationships. The latter exists in associations formed in order to engage in First Amendment rights such as speech, assembly, petition for the redress of grievances, and the exercise of religion. *Id.* at U.S. 617-618, L.Ed.2d 471.

The Court also stated that the protection provided by the Constitution varies depending on the circumstances of the case:

> [T]he nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other aspect of the constitutionally protected liberty is at stake in a given case.

Id. at U.S. 618, L.Ed.2d 471.

In developing a "test" for determining whether an association or assembly receives constitutional protection as an "intrinsic" right, the Court identifies several factors: the relatively small size of the group, a high degree of selectivity to begin and maintain the affiliation, and seclusion from others in critical aspects of the relationship. As examples,

the Court mentioned marriage, raising and educating children by the family, and co-habitation.

> As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty.

Id. at U.S. 620, L.Ed.2d 472-473. This case concerns teenagers aged 14 to 18 at a dance hall. It is not primarily a familial gathering or activity. It is not a small, intimate class (although when dancing they may be paired). In fact, it is a rather public gathering of teenagers (the dance hall, presumably, has no "membership" requirements or other means of selecting which teens will be admitted). In short, teenagers at a dance hall are not the type of intimate selective group which Justice Brennan referred to.

In her concurring opinion, Justice O'Connor addressed what Justice Brennan called the "instrumental" form of freedom of association:

> The proper approach to analysis of First Amendment claims of associational freedom is, therefore, to distinguish nonexpressive from expressive associations and to recognize that the former lack the full constitutional protections possessed by the latter.

Id. at U.S. 638, L.Ed.2d 485. This case does not involve "expressive association" for which the Constitution provides protection. The dance hall is not a forum for a particular political or sociological viewpoint as would typically be involved in a First Amendment case. Adolescents do not gather at the dance hall to deliver an address to their peers, to petition for the redress of grievances, or for the exercise of religion, but to entertain themselves. Thus, §14-8.1 does not burden teenagers' right of "expressive association."

While the lower court is correct in stating the general principle that children have a right to associate, it failed to apply this Court's guidelines in defining when the right is afforded constitutional protection.

Even assuming that there is a protected right involved here, §14-8.1 does not infringe on that right. The City's purpose in enacting §14-8.1 was to provide a venue for teens to dance while safeguarding them from influences of older individuals. This measure was a trade-off for removing the requirement that teenagers must be accompanied at a dance hall by their parents. Prior to enacting §14-8.1, children aged 14 to 18 could not enter a dance hall without their parent or guardian. Thus, in this light, the ordinance actually *increases* minors' freedom of association while providing a venue at which they can gather and dance. Of course, their parents or guardians are not prohibited from entering the dance hall by §14-8.1.

II. THE RATIONAL-BASIS TEST IS THE APPROPRIATE STANDARD OF REVIEW, AND §14-8.1 WITHSTANDS SUCH REVIEW

Assuming, *arguendo*, that there is a constitutionally protected right at issue, which standard of review is applicable to the City's action in regulating teen dance halls? Petitioners assert that the City must show merely that there is a rational relationship between the ordinance and a legitimate state interest. In the alternative, Petitioners argue that this regulation of teen dance halls serves a compelling state interest, withstanding even strict scrutiny.

Justice Powell, in concurring with the Court's decision in *Carey v. Population Services International*, 431 U.S. 678, 52 L.Ed.2d 675, 97 S.Ct. 2010 (1977), indicates that the cases in which the Court has applied the "compelling interest" standard are those that involve "direct and substantial

interference with constitutionally protected rights." *Id.* at U.S. 703-704, L.Ed.2d 696. He continued by stating that this strict standard should be used with deliberate restraint in cases such as this.

> . . . [the "compelling interest"] standard has been invoked only when the state regulation entirely frustrates or heavily burdens the exercise of constitutional rights in this area . . . But a test so severe that legislation rarely can meet it should be imposed by courts with deliberate restraint in view of the respect that properly should be accorded legislative judgments.

Id. at U.S. 705, L.Ed.2d 697.

The *Carey* case concerned a statute which prohibited the sale, advertising or display of contraceptives, which the Court wisely struck down. Justice Powell was of the opinion that the statute must fall under even a less strict review.

> There is also no justification for subjecting restrictions on the sexual activity of the young to heightened judicial review. Under our prior cases, the States have broad latitude to legislate with respect to adolescents. . . . I would not have thought it was even arguably necessary to review state regulation of this sort under a standard that for all practical purposes approaches the "compelling state interest" standard. . . . [T]he relevant question in any case where state laws impinge on the freedom of action of young people in sexual matters is whether the restriction rationally serves valid state interests.

Id. at U.S. 705-707, L.Ed.2d 697-699.

Clearly, the City's ordinance relating to teen dance halls does not "entirely frustrate" or "heavily burden" a minor's right to associate with older or younger persons. The ordinance does not seek to completely cut off contact between teenagers and other persons. §14-8.1 is merely a rational "time, place and manner" regulation.

In *Ginsberg v. New York*, 390 U.S. 629, 20 L.Ed.2d 195, 88 S.Ct. 1274 (1968), this Court upheld the right of the state to punish the seller of "girlie" magazines to minors, indicating that the proper determination was whether the New York legislature's action was rational.

> To sustain state power to exclude material defined as obscenity by § 484-h requires only that we be able to say that is was not irrational for the legislature to find that exposure to material condemned by the statute is harmful to minors.

Id. at U.S. 641, L.Ed.2d 205.

In the Equal Protection context, the Court indicated that statute which created age classifications (like the case at bar) was subject to only a rational-basis standard of review. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 314, 49 L.Ed.2d 520, 525, 96 S.Ct. 2562 (1976).

Because §14-8.1 does not significantly impinge teenagers' right of association, the "compelling interest" standard should not be applied here.

III. EVEN UTILIZING A HIGHER STANDARD OF REVIEW, A COMPELLING STATE INTEREST IS SERVED BY §14-8.1

A. The State's Authority To Protect Children

Assuming, *arguendo*, that there is a constitutionally protected right at issue, and that a heightened standard of review is used to judge the validity of §14-8.1, the ordinance still survives scrutiny.

Recently this Court wrote:

> The "legitimate and compelling state interest" in protecting the community from crime cannot be doubted. We have stressed before that crime prevention is a "weighty social objective," and this

> interest persists undiluted in the juvenile context. The harm suffered by the victim of a crime is not dependant upon the age of the perpetrator. And the harm to society generally may even be greater in this context given the high rate of recidivism among juveniles. [Citations omitted.]

Schall v. Martin, 467 U.S. 253, 264, 81 L.Ed.2d 207, 217, 104 S.Ct. 2403 (1984)

This recent reaffirmation stems from the Court's recognition of the state's authority to protect children in *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 99 L.Ed. 645, 64 S.Ct. 438 (1943).

> [E]ven where there is an invasion of protected freedoms 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . .'

Ginsberg, supra at U.S. 638, L.Ed.2d 203, quoting *Prince v. Massachusetts, supra* at U.S. 170, L.Ed. 654.

Summarizing the Court's decisions over several decades, it said:

> Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention."

Bellotti v. Baird, 443 U.S. 622, 635, 61 L.Ed.2d 797, 808, 99 S.Ct. 3035 (1979).

In writing for the Court and expressing the *parens patriae* interest in preserving and promoting the welfare of the child, Justice Rehnquist stated that children, by definition, "are not assumed to have the capacity to take care of themselves." In appropriate circumstances, their liberty interest

may be subordinated to the state's interest in preserving their welfare. *Schall v. Martin*, 467 U.S. 253, 265, 81 L.Ed.2d 207, 218, 104 S.Ct. 2403 (1984). The Court noted that the New York court had stressed "the desirability of protecting the juvenile from his own folly." *Id.*

Recognizing that children's constitutional rights are not coextensive with those of adults, the Court in *Bellotti v. Baird*, 443 U.S. 662, 61 L.Ed.2d 797, 99 S.Ct. 3035 (1979), stated:

> The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination of a State's duty towards children."

Id. at U.S. 633-635, L.Ed.2d 807-808.

By enacting §14-8.1 of the Dallas City Code, the City has taken action to put into effect the principles espoused by this Court in the above cited cases. Dallas has joined the Court in recognizing that . . .

> . . . youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly "during the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment" expected of adults.

Eddings v. Oklahoma, 455 U.S. 104, 115-116, 71 L.Ed.2d 1, 11-12, 102 S.Ct. 869 (1982).

Thus, it cannot be seriously questioned that the issues of crime prevention generally, as well as the prevention of juvenile crime and protection of minors specifically, are of compelling importance to state and local governing bodies. In case after case, this Court has reaffirmed the state's authority, nay, responsibility to protect its young citizens, particularly where parental guidance or supervision is unavailable or inadequate.

Justice White, writing for the Court, addressed a situation similar to the instant case in which restrictions on the right of a child were sustained when such restrictions on an adult would not have been sustained. In the opinion for *Hazelwood School District v. Kuhlmeier*, 484 U.S. ____, 98 L.Ed.2d 592, 602, 108 S.Ct. 562 (1988), this Court stated:

> We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel School District No. 403 v. Fraser*, 478 U.S. 675, 92 L.Ed.2d 549, 106 S.Ct. 3159 (1986), and must be "applied in light of the special characteristics of the school environment."

Petitioners do not attempt to equate a dance hall with a school, yet the principle espoused is the same — the children are in an environment with special characteristics, and regulation is both warranted and reasonable. Petitioners urge this Honorable Court to apply the reasoning utilized in *Hazelwood* so that the children of Dallas may be protected from corrupting influences.

B. Special Characteristics Of Dance Halls

This Court has not spoken often of dance halls specifically, but neither has it been silent. The trial court in this case was not the first to recognize the inherent characteris-

tics of dance halls. Dance halls were specifically listed among "disreputable places" in one of this Court's cases concerning children's rights and the states' duty to protect their welfare. *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 99 L.Ed. 645, 64 S.Ct. 438 (1943). In *Prince*, the Supreme Court upheld a statute which prohibited persons from encouraging minors to sell or trade certain literature on the streets or public places. In discussing the distinctions to be recognized between what might be reasonable haunts for adults and unreasonable places for children, the Court wrote:

> . . . the mere fact that a state could not wholly prohibit this form of adult activity, whether characterized locally as a "sale" or otherwise, does not mean it cannot do so for children. Such a conclusion granted would mean that a state could impose no greater limitation upon child labor than upon adult labor. Or, if an adult were free to enter dance halls, saloons, and disreputable places generally, in order to discharge his conceived religious duty to admonish or dissuade persons from frequenting such places, so would a child with similar convictions and objectives, if not alone then in the parent's company, against the state's command.

Id. at U.S. 168, L.Ed. 653.

This Court's recognition of the traditionally unsavory characteristics of dance halls was well established before *Prince* was decided. Public dance halls in our jurisprudence "have been regarded as being in that category of businesses and vocations having potential evil consequences, like traffic in intoxicating liquor, pool halls, pawn broking, carnivals, and shows." McQuillin, THE LAW OF MUNICIPAL CORPORATIONS, §24.210 (3rd. Ed. 1981).

The City's purpose in enacting §14-8.1 was to remove the requirement that the children be accompanied by their parent or guardian without leaving the children open to the influence of older individuals; the City has provided a venue for their free association with peers while safeguarding their well being. Because of the special nature of dance halls, restrictions as to the age of patrons was a rational means of serving this compelling interest.

§14-8.1 is not an attempt to supplant parental supervision, but is an effort to give parents the support of the law in a reasonable manner. It is an attempt to protect young citizens in an atmosphere where the climate for corrupting influences is great, knowing that the nature of children aged 14 to 18 is to admire and uncritically accept the statements and conduct of young adults from 19 to 30 years of age. Young adults have a capacity and propensity to exert considerable influence over adolescents. Certainly, the propensity for harming children is as great in this case as the propensity for harm involved in the *Ginsberg* case. For example, why should a 14 year old at a dance be subjected to the influence of a 30 year old? How many times have we read newspaper accounts of the harm which occurs to minors while in the company or at the suggestion of older scofflaws?

CONCLUSION

For the reasons stated, Petitioners respectfully request that the Court reverse the judgment of the Court of Appeals for the Fifth Supreme Judicial District of Texas at Dallas to the extent it invalidated §14-8.1 of the Dallas City Code.

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
CITY OF DALLAS, TEXAS
City Hall 7BN
1500 Marilla Street
Dallas, Texas 75201
(214) 670-3510

By /s/ ANALESLIE MUNCY
Analeslie Muncy
City Attorney

By /s/ KENNETH C. DIPPEL
Kenneth C. Dippel
Counsel of Record
First Assistant City Attorney

By /s/ CRAIG HOPKINS
Craig Hopkins
Assistant City Attorney

Attorneys for Petitioners
CITY OF DALLAS AND BILLY PRINCE

November 17, 1988.

RESPONDENT'S

BRIEF

No. 87-1848

(3)

IN THE

Supreme Court of the United States

October Term, 1988

City of Dallas and Billy Prince,
Chief of Police,

Petitioners,

vs

Charles M. Stanglin, Individually and
d/b/a Twilight Skating Rink,

Respondent.

ON WRIT OF CERTIORARI TO THE TEXAS COURT OF APPEALS FOR THE FIFTH JUDICIAL DISTRICT OF TEXAS IN DALLAS

RESPONDENT'S BRIEF ON THE MERITS

Daniel J. Sheehan, Jr.
Sheehan, Young, Smith & Culp
2001 Bryan Tower, Suite 2880
Dallas, Texas 75201
(214) 953-0101
Counsel for Respondent

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RESPONDENT'S BRIEF ON THE MERITS

CONSTITUTIONAL PROVISION INVOLVED

In addition to the First Amendment and the applicable ordinance set out verbatim in Petitioners' Brief, Section 1 of the Fourteenth Amendment to the United States Constitution is involved.

It provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUMMARY OF ARGUMENT

The constitutionally protected right of freedom of association extends to social association and participation in cultural events. Expressive association does not require that there be a formal organization with defined purposes and objectives. The existence of a protected association is not dependent on the members' intent to have a common purpose or a collective identity.

Intrinsic or intimate association is infringed when the government prohibits relatives, couples and groups of close friends from engaging together in a social or cultural activity, such as dancing, without any underlying rational basis.

The City of Dallas cannot single out a particular cultural activity and deny citizens access to participate together in that activity, without a supportable reason.

The ordinance infringes upon a fundamental right and can be justified only by meeting the "compelling state interest" standard of review. The City is unable to show, however, even that the ordinance under review has a rational basis, much less that it is the least restrictive means of accomplishing its compelling goals. The City has not shown that any harm results from mingling of younger teens and older persons. In any event, the ordinance does nothing to prevent such harm, assuming it could be shown, where younger teens and older adults are permitted to mingle freely within the same premises, so long as they are not dancing.

ARGUMENT

In *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244 (1984), this Court provided a framework for analyzing claims of infringement of freedom of association. Two categories of freedom of association were recognized from prior decisions, the right of intimate association and the right of expressive association. Recognizing that many cases will not clearly fall distinctly into either category, the Court identified a possible hybrid category: ". . . when the State interferes with individuals' selection of those with whom they wish to join in a common endeavor, freedom of association in both of its forms may be implicated." *Id.* at 618, 104 S.Ct. at 3249. Such is the case here.

Much of the difficulty presented by this case is that, arguably, the relationships are not as demonstrably "intimate" as *Roberts* would seem to require, nor is the purpose as demonstrably "expressive." Quite frankly, the categories were created in a case in which the lines were more easily drawn. *Roberts, supra*; See also, *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 107 S.Ct. 1940 (1987).

Nevertheless, the parameters established in Roberts are sound and this case can be decided within them. Also, in doing so, this Court can elaborate greatly upon the entire issue of freedom of association.

I. THE ORDINANCE VIOLATES RIGHT TO EXPRESSIVE ASSOCIATION

The City of Dallas has legislated its disapproval of dancing as an activity. Teens and young adults may not attend a dance together, although they may skate together, even within the same premises. The discussion of whether this is rational, or serves any legitimate government objectives, is for another argument within this Brief. It is important to identify, however, for purposes of the present discussion, that association for the purpose of dancing is what is prohibited.

Dancing is a social and cultural event. It is entitled to First Amendment protection. The City and *amici* interpret *Roberts* and, apparently, the First Amendment, far too narrowly. They argue that there is no constitutional issue here at all because a ". . . dance hall is not a forum for a particular political or sociological viewpoint . . .." (Petitioners' Brief, p. 7). Also, this is not the NAACP, or the Jaycees: "[T]here is here no 'association' at all in the sense of an organized group with a collective identity." (Brief of U.S. Conference of Mayors, et al., p. 6).

The right to freely associate with others should not depend upon the existence of a structured organization having defined purposes and objectives. That the persons who associate are strangers should not be determinative. Certainly associations with bylaws and membership lists and

specific purposes are readily identifiable. But that is not to say that the lack of those characteristics means that there is no association.

Associations may have legitimate First Amendment aspects even though that is not directly intended. First Amendment protection should not be reserved for those who set out to knowingly and intentionally make expressions for political, religious and cultural reasons. Those expressions may be a natural incident of their conduct. When people join together to dance, they are engaging in a cultural activity. Their cultural interests are being affected and influenced. Their very presence in the dance hall is an expression of their approval of that particular cultural activity. In numbers, they are defining and establishing norms for social activity.

There are dozens of books that discuss dance and its role in expression. An example is found on the first page of A. Hawkins, *Creating Through Dance* (rev'd ed. 1988):

> Dance is one of man's oldest and most basic means of expression. Through the body, man senses and perceives the tensions and rhythms of the universe around him, and then, using the body as an instrument, he expresses his feeling responses to the universe. From the fabric of his perceptions and feelings he creates his dance. Through his dance he relates to his fellow man and to his world.
>
> Man's basic impulse to communicate through movement is set in action by motivations that are sometimes purely social, and other times essentially expressive, in na-

> ture. Dance resulting from either type of motivation is a unifying experience for the human being. As a social group activity, dance acts as a force that integrates or binds together. Through rhythmic movement the individual relates to others in a socially satisfying manner. As an expressive activity, dance enables the individual to relate to his environment in a highly personal and unique fashion.

Dancing is inarguably a cultural event. This Court has expressly held that the First Amendment includes a "right to associate with others in pursuit of a wide variety of . . . cultural ends." *Roberts* at 3252. Part of the cultural experience of dancing is the social association that is almost necessarily involved. Contrary to the assertion of *amici*, this Court has recognized that freedom of association extends to social associations. In *Coates v. City of Cincinnati*, 402 U.S. 611, 91 S.Ct. 1686 (1971), the court reviewed an ordinance making it unlawful for three or more persons to assemble, except at a public meeting of citizens, on any of the sidewalks and conduct themselves in a manner "annoying to persons passing by." This ordinance was held to violate the due process standards of vagueness, but also the constitutional right of free assembly and association because ". . . the right of the people to gather in public places for social or political purposes would be continually subject to summary suspension . . .." *Id.* at 617, 91 S.Ct. at 1689.

Lower courts have directly addressed the issue of social association. A very similar ordinance to the one under review here was held unconstitutional in *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980). The

ordinance barred persons under seventeen years of age from entering establishments to play coin-operated machines unless accompanied by a parent. The Court of Appeals for the Fifth Circuit held that "[t]he right to associate freely and "'to go where one pleases'" is a protected freedom under the first amendment and a substantive guarantee of fourteenth amendment due process." *Id.* at 1041. The court further stated that the Supreme Court has never ruled directly on the application of a right of freedom of association in a social context such as the one at issue there, but had at least implicitly endorsed such a right in *Gilmore v. City of Montgomery*, 417 U.S. 556, 575, 94 S.Ct. 2416, 2427.

The Court of Appeals for the Fifth Circuit had itself previously recognized the right to free association in an apparently social context in striking down a loitering ordinance that made it illegal to be on a public street or sidewalk with one or more persons knowing that one of them is using or possessing an illegal drug. *Sawyer v. Sandstrom*, 615 F.2d 311 (5th Cir. 1980).

Other courts agree with this view. In *Wilson v. Taylor*, 733 F.2d 1539, 1544 (11th Cir. 1984), the court stated that "[w]e follow *Sawyer* and align ourselves with recent cases holding that the first amendment freedom of association applies not only to situations where an advancing of common beliefs occurs, but also to purely social and personal associations."

It is true that these cases were decided before *Roberts* but there is nothing to indicate that *Roberts* would have changed the ultimate holdings, or that this Court would have decided those issues differently. An association need not be cloaked in the garb of a defined, structural organization in

order to be protected. It need only have some expressive purpose or result.

The Ninth Circuit, in a post-*Roberts* case, has recognized that freedom of association can extend to social associations to the extent the associations are expressive. In *IDK, Inc. v. County of Clark*, 836 F.2d 1185 (9th Cir. 1988), the court held that the relationship between a customer and an escort service model for purposes of a date was not entitled to constitutional protection.[1] In its analysis, however, the court held that "[d]ating and other social activities are worthy of some protection under the first amendment even though these activities may lack an overt political, religious, or educational purpose." *Id.* at 1194.

Roberts should not stand for the proposition that social associations, even incidental ones, are not entitled to First Amendment constitutional protection. Social associations can be expressive. The First Amendment does protect associations for cultural purposes. Certainly, dance is a cultural activity having expressive elements and associations in order to dance have some degree of constitutional protection.

II. THE ORDINANCE VIOLATES RIGHT TO INTIMATE ASSOCIATION

This Court has stated that the precise boundaries of the intimate or private relationship have not been marked, but

[1]Of substantial significance to the court's decision in this regard is the commercial nature of the relationship. This case, on the other hand, deals with any entirely social and cultural association since Stanglin is asserting the rights of his customers only.

they encompass more than relationships among family members. *Rotary Club* at 1945-46. They involve "deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one's life." *Roberts* at 3250.

The ordinance at issue does interfere with intimate, personal associations, at least incidentally, by prohibiting persons of different ages from attending dances together, regardless of their personal relationships. Thus, a married couple could be prohibited, as well as an engaged couple, brother and sister, or other relatives. Close personal friends are separated at the door because of age differences and not permitted to enjoy a mutual interest in dancing. High school juniors and seniors would be prevented from having their class party at the Friday night dance because their members fall on either side of the age line.

The City of Dallas ordinance is certain to infringe on both types of associational rights. It prohibits association for the purpose of participating in a cultural activity that is highly expressive. The nature of the cultural activity itself, dancing, is one that is often enjoyed by persons having the type of intimate association protected by *Roberts*. As is true of other fundamental rights, the right of association is not absolute. The City, however, bears a heavy burden in justifying its infringement.

III. STANDARD OF REVIEW IS A "COMPELLING STATE INTEREST"

Determination of the appropriate standard of review in this case is not without some difficulty. Freedom of

association is a fundamental right. *NAACP v. State of Alabama*, 357 U.S. 449, 78 S.Ct. 1163 (1958). As such, "[s]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.* at 462, 78 S.Ct. at 1171. This Court has recently reaffirmed the importance of the right and held that infringements may be justified only upon a showing that a regulation serves a compelling state interest, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive. *Roberts* at 3252.

Amici argues, however, that the regulation of conduct of minors is not subject to the rigorous "compelling interest" standard. (Brief of U.S. Conference of Mayors, p. 15). It is true that the fact of minority casts the constitutional issues in a somewhat different light.

Minors are "persons" under the United States Constitution and possess constitutional rights. *Tinker v. Des Moines Independent Com. School District*, 393 U.S. 503, 511, 89 S.Ct. 733, 739 (1969). Clearly, however, ". . . the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, ..." *Prince v. Massachusetts*, 321 U.S. 158, 170, 64 S.Ct. 438, 444 (1944). This Court has recently identified three reasons justifying the conclusion that children's rights are viewed differently than adults. They are the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing. *Bellotti v. Baird*, 443 U.S. 622, 635, 99 S.Ct. 3035, 3043 (1979).

This Court has stated that the decision whether to bear or beget a child involves a fundamental right to privacy and

infringement can be justified only by compelling state interests. *Carey v. Population Services International*, 431 U.S. 678, 684, 97 S.Ct. 2010, 2016 (1977). In the same opinion, however, it was held that state restrictions inhibiting privacy rights of minors are valid only if they serve "any significant state interest . . . that is not present in the case of an adult." *Id.* at 2020 quoting *Planned Parenthood v. Danforth*, 428 U.S. 52, 75, 96 S.Ct. 2831, 2844 (1976). The Court acknowledged that this is a less rigorous standard than the compelling state interest standard but was appropriate because of the states' greater latitude in regulating conduct of children. *Carey*, *supra* at 2020 fn. 15. Justice Powell considered this standard essentially as stringent as the "compelling state interest" standard. *Id.* at 2027 (concurring opinion).

While *Carey* does offer support for a somewhat lesser standard of review in cases involving minors (at least on privacy issues), *amicus'* reliance on *Hazelwood School District v. Kuhlmeier*, 108 S.Ct. 562 (1988) is misplaced. *Hazelwood* held that educators may exercise editorial control over student speech in school-sponsored expressive activities ". . . so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 571. That holding, however, is clearly based upon the Court's deference on educational matters to educators and parents. *Id.*

There is no reason to impose a different standard of review when minors' fundamental constitutional rights are at issue. It is the fundamental nature of the right that invokes the strict "compelling state interest" standard and the right is just as important to minors as it is to adults. What changes in analyzing cases involving minors is the number and nature of the justifications for the regulation. Thus, the peculiar vulnerability of children may easily raise certain state

interests to the level of "compelling" where that standard could not be met if the regulation affected adults. The inability to make critical decisions in an informed mature manner, and the importance of the parental role in child rearing can justify different treatment of adults and children, even though the rights of both are fundamental. Compare *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973) with *Bellotti v. Baird*, 443 U.S. 662, 99 S.Ct. 3035 (1979).

Nor does the fact that the infringement is "minimal" justify a lesser standard of review, as has been argued. Of course, what may seem a "minimal" infringement to some can be substantial to others. To grade the degree of infringement would be an extremely difficult task and would invite trouble. Indeed, this Court has already spoken, at least indirectly, on that issue in a case involving freedom of association: "Even if the Unruh Act does work some *slight* infringement on Rotary members' right of expressive association, that infringement is justified because it serves the State's compelling interest . . .." *Board of Directors of Rotary International v. Rotary Club*, 107 S.Ct. 1940, 1947 (1987) (emphasis added).

IV. THE ORDINANCE FAILS UNDER ANY STANDARD OF REVIEW.

In any event, the real issue is not whether the states' interest here is "compelling," "significant" or merely "rational." The interest cited is the prevention of crime and protection of minors. Clearly, this interest satisfies the requirements of all of the standards. What the City has not shown, and cannot show, is that the ordinance is the least restrictive means of accomplishing the objective, or even that it is helpful at all in accomplishing the objective. The City

must demonstrate some connection between the intrusion and the legitimate interest. There is an element of causation that must be shown. The activity that is proscribed here, dancing with persons of different ages, is not *per se* evil. There is a contention that such activity exposes teens to conduct that is evil. That contention has not been supported in the least.

The ordinance under review simply has no real connection with the City's stated interests and objectives. There is absolutely nothing in the record to support a conclusion that persons of different ages dancing together causes crime, drug use, immoral behavior or any other conduct that a City has legitimate reason to protect against. Certainly any evidence that could be adduced cannot be attributed to the activity of dancing. Teenagers, young and old, (as well as adults) can associate at movies, ice cream parlors, bowling alleys, concerts, playgrounds, parks and virtually everywhere else, except places where strictly adult activities take place, such as saloons.

The City argues that these same facts show that any infringement of constitutional rights is "minimal." That is like prohibiting publications on the subject of evolution and offering as justification that there are plenty of other books to read.

The facts of this case graphically illustrate just how unreasonable this ordinance is in light of its stated objectives. The dance area is separated from the skating area by movable pylons. (SF 19). Teenagers of all ages may skate together, within the very same premises, listening to the very same music as the dancers, under the same supervision. (SF 18-20). Obviously, the skaters must use the same route to the

skating rink that they would use if attending the dance and they park in the same parking lot.

A case very similar to this case is *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980). The City of Mesquite passed an ordinance prohibiting persons under seventeen years of age from entering coin-operated amusement centers except with a parent or guardian. One stated purpose of the ordinance was to prevent young teens from exposure to those who promote gambling, the sale of narcotics and other unlawful activities. The Court of Appeals for the Fifth Circuit noted that the record contained no evidence that persons under seventeen had been exposed to such problems at coin-operated amusement centers. Furthermore, persons who would provide such corrupting influence were not drawn by the machines but, rather, by the presence of their potential victims. Since the potential victims could be found elsewhere, the city's regulation did not prevent exposure of its teens to such elements. The court held that the regulation did no more than evidence the city's disapproval of coin-operated amusement centers and ". . . mere disapproval is not enough constitutionally to justify bringing the full weight of the municipality's regulatory apparatus into play." *Id.* at 1040.

A virtually identical case is presented here. First, there is no evidence of any "corrupting influence" being exercised at the Twilight Skating Rink. Second, there is no evidence that such "corrupting influence" finds special nourishment at dances. The ordinance does not bear a rational relation to the end it seeks to further. It does not rest "upon some ground of difference having a fair and substantial relation to the object of the legislation . . .." *Id.* at 1039. Failing in this, it clearly fails to satisfy the requirements of furthering a "compelling state interest" or a "significant state interest."

The ordinance is far too sweeping in its attempt to achieve its goals. There are less restrictive means available that do not burden constitutional rights. That a possible ill consequence may occur does not justify total ban of an activity. A government has significant interest in preventing the use of steroids, but it must achieve its goal in some manner short of a ban on all athletic competition. As the appellate court below noted, arrest and prosecution, education, punishment and increased supervision all are available means of meeting the City's objectives. (Petition for Writ of Certiorari, Appendix A-6).

CONCLUSION

Freedom of association extends to activities and gatherings that may not have significant political, religious or economic purposes. Sharing in cultural activities and participating in social interaction, without unwarranted government intrusion, is an essential part of being a free citizen. That the importance of it is less immediately obvious than, for example, the right to hear political debate does not mean it is not important. This Court should further define expressive association so that these equally important forms of association are recognized as protected. Intimate association also protects that right of citizens to enjoy activities together.

To accept the City's argument that no constitutional right is involved here is dangerous. The lines that would be drawn are artificial ones that would allow protection only for associations advocating "political or sociological viewpoints" and where it is "an organized group with a collective identity." An association can be spontaneous, a happenstance gathering. If passersby in a park assemble into a crowd

around a talented street musician, their collective enjoyment is part of the experience. It does not matter that they are not all members of an area music appreciation society and arrived together in a chartered bus. There may be a number of reasons why the City could legislate against such an assembly, but there must be at least one.

Respectfully submitted,
SHEEHAN, YOUNG, SMITH & CULP
2001 Bryan Tower, Suite 2880
Dallas, Texas 75201
(214) 953-0101

ORIGINAL
SIGNED BY
DANIEL J. SHEEHAN, JR.

By: _____
Daniel J. Sheehan, Jr.

COUNSEL FOR RESPONDENT

December 7, 1988

REPLY

BRIEF

No. 87-1848

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

CITY OF DALLAS and BILLY PRINCE, Chief of Police,
Petitioners,

v.

CHARLES M. STANGLIN,
Individually and d/b/a Twilight Skating Rink,
Respondent.

On Writ of Certiorari to the Texas Court of Appeals for the Fifth Judicial District of Texas in Dallas

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PETITIONERS' REPLY BRIEF

ANALESLIE MUNCY
City Attorney

KENNETH C. DIPPEL
Counsel of Record
First Assistant City Attorney

CRAIG HOPKINS
Assistant City Attorney

City Attorney's Office
7B North City Hall
1500 Marilla Street
Dallas, Texas 75201
(214) 670-3510

Attorneys for Petitioners

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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PETITIONERS' REPLY BRIEF

ARGUMENT

Respondent begins his argument with the assertion that, in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), this Court recognized a "hybrid category" of constitutionally protected associational freedom which includes social association (Respondents' Brief on the Merits, p. 3). However, the language quoted by Respondent from *Roberts* merely indicates the Court's awareness that some associations may fall into both recognized categories (expressive and intimate) rather than strictly one or the

other. The Court did not "recognize" that there is a third protected category which is neither expressive nor intimate association.

The Court should not recognize a constitutionally protected right of social association in the juvenile context because of the resulting inability of governing bodies to effectively legislate for the protection and welfare of their minor citizens. If the Constitution is broadly interpreted to protect all recreational association such that age is no longer a legitimate factor in regulating entry to commercial venues, then the government is without power to aid parents with the support of the law. Gone is the long recognized protection of the law for minors while not in the company of their parents.

I. DANCING IN A COMMERCIAL DANCE HALL IS NOT EXPRESSIVE ASSOCIATION PROTECTED BY THE CONSTITUTION

To say dancing is a form of expression is true in the sense that every action that a person takes is an expression. The kind of car we drive is an expression of our values concerning transportation. The way we decorate our homes is an expression of our taste. The way we walk is an expression of our attitude towards a particular task that necessitates walking to some location. No one would question that adults are, generally, free to choose which car they will buy, how they will maintain their residence, and how they will walk. However, as free as we may be to enjoy these expressive activities, all are subject to reasonable government regulation.

For example, if we do not maintain an automobile in proper condition, we may be subject to a fine. One may not maintain a home in a way contrary to local housing codes. The local government may exercise its police power to protect us when we walk, by regulating where or when we may walk.

These are all reasonable regulations by a local governing body for the purpose of protecting individuals while engaged in certain activities which have the potential to cause harm. The regulation is necessary not because of the activity (driving, walking, decorating, dancing), but because of the circumstances surrounding the activity (walking across a busy street, dancing in a commercial dance hall). They are all expressive activities, but they are not immune from regulation. It is not dancing per se that is harmful, but the gathering of hundreds of youths in an atmosphere where older persons may more easily influence impressionable adolescents.

Respondent cites *Coates v. City of Cincinnati*, 402 U.S. 611 (1971) for the proposition that gathering at a dance hall is engaging in expressive association. The decision in *Coates* concerned an ordinance imposing criminal sanctions for persons gathering on a public street or sidewalk who "annoy" other persons. The divided Court found the ordinance unconstitutionally vague because "annoying conduct" was not defined. *Id.* at 614. The Court stated that the ordinance was violative of the Constitution because it could be subjectively enforced on discriminatory grounds such as race, ideology, or appearance, and thus might impair associational freedoms. However, the Court did not endorse constitutional protection for every form of association. The *Roberts* decision thirteen years later specifically addressed the issue *Coates* did not present—the limits of constitutionally protected association. Thus, *Coates* was not a First Amendment case like this case. No charges of vagueness have been leveled at the dance hall ordinance.[1]

---

[1] Respondent made an equal protection argument in the lower court, but apparently has chosen not to continue it. Respondent makes a statement sounding somewhat in equal protection in his Brief on the Merits when he refers to singling out a particular cultural activity. Resp. Br. at 2 and 14. However, no serious equal protection argument is made.

Thus, while dancing is an expression, it is not the type of expression the framers of the Constitution guaranteed against regulation. It would be a great disservice to our youth for its government to sanction commercial dance halls where minors are prey to irresponsible urgings to, "Try this drug," "Drink this," "Smoke that," or "Let me make a woman out of you." These same irresponsible urgings can come from their own age group, but older persons will typically have greater access to illicit drugs, alcohol or experience with adult sexual practices. Adolescents trying to impress or fit in with older people often submit to or acquiesce in activities about which they cannot make mature decisions.

II. DANCING IN A COMMERCIAL DANCE HALL IS NOT INTIMATE ASSOCIATION PROTECTED BY THE CONSTITUTION

Respondent argues that the ordinance interferes with intimate relationships because, in some cases, relatives and friends may not frequent the same dance hall. The ordinance does not prohibit such persons from dancing together because of an age difference.

Persons who are related, friends or strangers may dance at all other dance halls licensed by the City and at private locations regardless of their ages.[2] Thus, to say that the City of Dallas prohibits intimately related persons from dancing together is untrue. § 14-8.1

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[2] Classes A, B, and C differ in the number of days per week dancing is permitted; Class D is for dance instruction. If under 17 years of age, entry to Classes A, B, or C requires accompaniment by parent or guardian. Dallas City Code §§ 14-1, 14-8.

A dance hall license is not required if the dance is at any of the following locations: a private residence from which the general public is excluded; a place owned by the federal, state or local government; a public or private elementary school, secondary school, college, or university; a place owned by a religious organization; or a private club. Dallas City Code § 14-2.

merely creates a new opportunity for business persons to operate a dance hall strictly for teenagers where parents can be reasonably secure in the feeling that older scofflaws are not associating with their children.

Although Respondent's sugestion is incorrect that dancing at a commercial dance hall is equivalent to truly intimate association such as marriage, cohabitation and having children, he alludes to the atmosphere of dance halls which lends itself to those who would influence adolescents to experiment with "adult" practices. Dance halls are "quasi-adult" places, different than swimming pools, miniature golf courses or (non-adult) movie theaters, and warrant regulation to protect minors.

III. NARROWLY TAILORED REGULATIONS PROTECTING MINORS ARE SUBJECT TO RATIONAL BASIS STANDARD OF REVIEW

Although Respondent's suggestion is incorrect that dancdecisions which apply less stringent review to regulations protecting minors, Respondent apparently concludes that socializing is more important than protecting adolescents from crime and persons who may influence them to experiment with illicit drugs, alcohol and adult sexual conduct. Not only is there no justification for dispensing with the Court's reasoning concerning regulations protecting minors, but it would be unwise to accept Respondent's claim that the degree of the intrusion is immaterial. Heightened scrutiny, which may be required when the regulation "entirely frustrates" or "heavily burdens" a fundamental right, is not appropriate here. *Carey v. Population Services International*, 431 U.S. 678, 705 (1977) (concurring opinion).

Respondent claims that it is unimportant whether the alleged intrusion is minimal despite the Court's explanation in *Roberts* that "the nature and degree of constitutional protection afforded freedom of association may vary depending on the extent to which one or the other

aspect of the constitutionally protected liberty is at stake in a given case." *Roberts* at 618. When viewed in light of the fact that persons may dance together at any number of other venues regardless of age, Respondent's argument seems particularly misguided. In this case, the City's action is minimally intrusive, if at all, and serves a rational and even compelling interest.

IV. REGULATION OF DANCE HALLS FURTHERS THE CITY'S INTEREST IN PROTECTING MINORS

Respondent argues that crime prevention and protection of minors have no relationship to providing a dancing venue for adolescents free from intrusion by older individuals. This argument is apparently grounded in the fact that of all places where adolescents may congregate, the City of Dallas picked dance halls to create an age-appropriate facility. As the Brief of the U.S. Conference of Mayors indicates, this is not so much an indictment of what the City has done, as perhaps of what it has not. Respondent concludes with an analogy that the City's action is like banning athletics to prevent the use of steroids. However, the City has not banned dancing. The ordinance merely creates a fifth category of dance halls available to certain persons.

It is clear that cities may legislate one issue at a time to address legitimate governmental interests. In *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), the Court noted that the City "must be allowed to experiment with solutions to admittedly serious problems." *Id.* at 52. That an attempt to protect adolescents might be underinclusive is not a fatal flaw. As in *Renton*, the City's choice to address a certain type of business does not suggest that the City has singled out that business for discriminatory treatment.

It is interesting to consider the effect of the invalidation of § 14-8.1. It returns Dallas to a status of not having *any* dance halls which may be patronized by teen-

agers without parental accompaniment. It is clear that the practical effect of the ordinance is to expand associational freedom, not reduce it. It has not been disputed that the City may create age categories for unquestionably adult places such as bars, adult theaters, etc. Nor has it been questioned that Dallas may require parental accompaniment at dance halls for those under eighteen. However, to declare Class E dance halls unconstitutional would create problems in all attempts to regulate on the basis of age. Does the City unconstitutionally impair associational freedoms when it regulates the use of swimming pools, or sets aside separate times for youth and adult use of recreational facilities? Certainly these and the teen dance hall ordinance are appropriate regulations to protect those who lack the ability or maturity to adequately protect themselves.

CONCLUSION

The Court should not extend broad constitutional protection for adolescents socializing at a commercial dance hall. The Court should recognize the City's interest in protecting adolescents from undue influence in a place where the community finds a need to limit entry to an appropriate age category.

Petitioners respectfully request that the Court reverse the judgment of the Court of Appeals for the Fifth Judicial District Court of Texas at Dallas to the extent it invalidated the teen dance hall ordinance of the Dallas City Code.

Respectfully submitted,

ANALESLIE MUNCY
City Attorney

KENNETH C. DIPPEL
Counsel of Record
First Assistant City Attorney

CRAIG HOPKINS
Assistant City Attorney

City Attorney's Office
7B North City Hall
1500 Marilla Street
Dallas, Texas 75201
(214) 670-3510

Attorneys for Petitioners

AMICUS CURIAE

BRIEF

(5)

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BRIEF *AMICUS CURIAE* OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF PETITIONER, CITY OF DALLAS

WILLIAM H. TAUBE
Corporation Counsel
of Chebanse
359 E. Hickory
P.O. Box 51
Kankakee, IL 60901

MARVA JONES BROOKS
City Attorney
Department of Law
1100 South Tower
One CNN Center
Atlanta, GA 30303-2705

DOUGLAS N. JEWETT
City Attorney
Municipal Building
Tenth Floor, Law Department
Seattle, WA 98104

WILLIAM I. THORNTON, JR.
City Attorney
101 City Hall
Durham, NC 27701

FRANK B. GUMMEY, III
City Attorney
City Hall, Suite 213
P.O. Box 551
Daytona Beach, FL 32015

(Attorneys continued on inside cover)

CASILLAS PRESS INC., 1717 K ST NW WASHINGTON DC 20006 – 223-1220

10 pp

ROY D. BATES
City Attorney
City Hall
P.O. Box 147
Columbia, SC 29217

ROBERT J. ALFTON
City Attorney
A-1700 Hennepin County
Government Center
Minneapolis, MN 55487

JAMES K. BAKER
City Attorney
600 City Hall
Birmingham, AL 35203

FREDERICK D. COOKE
Corporation Counsel
Government of D.C.
District Building
Washington, D.C. 20004

JOSEPH N. de RAISMES
City Attorney
P.O. Box 791/1777 Broadway
Boulder, CO 80306

ROBERT J. MANGLER
Corporation Counsel
1200 Wilmette Avenue
Wilmette, IL 60091

NEAL E. McNEILL
City Attorney
200 Civic Center
Room 316
Tulsa, OK 74103

JOSEPH I. MULLIGAN
Corporation Counsel
615 City Hall
1 City Hall Square
Boston, MA 02201

DANTE R. PELLEGRINI
City Solicitor
313 City-County Building
Pittsburgh, PA 15219

CLIFFORD D. PIERCE, JR.
City Attorney
Room 314, City Hall
Memphis, TN 38103

BENJAMIN L. BROWN
Counsel of Record
CHARLES S. RHYNE
Of Counsel
JAN MAJEWSKI
RACHEL S. ULLMAN
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 466-5424

Attorneys for National Institute of Municipal Law Officers as Amicus Curiae

November 1988

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BRIEF *AMICUS CURIAE* OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS IN SUPPORT OF PETITIONER, CITY OF DALLAS

INTEREST OF THE *AMICUS CURIAE*

This brief Amicus Curiae is filed pursuant to Rule 36 of the rules of this Court on behalf of the more than 1,900 local governments that are members of the National Institute of Municipal Law Officers (NIMLO).

The members of NIMLO are state and political subdivisions. NIMLO is operated by the chief legal officers of its members, variously called city attorney, county attorney, city or county solicitor, corporation counsel, director of law, or any one of some twenty other titles. The Petitioner, City of Dallas, is

a member of NIMLO. The accompanying brief is signed by the municipal attorneys constituting the governing body of NIMLO, both on behalf of NIMLO and on behalf of each of their own cities.

The attorneys who operate NIMLO for their local governments are responsible for advising their city governments on the best ways to promote the health, safety and welfare of their children and on the regulation of business enterprises, such as dance halls. These attorneys also represent their governments in litigation resulting from the enforcement of safety and business regulations, such as the teenage dance hall ordinance before this Court. The Texas Court of Appeals for the Fifth Judicial District of Texas in Dallas has held that the City of Dallas ordinance providing such regulation was unconstitutional in part.

NIMLO believes that the decision of the Texas Court of Appeals does not properly recognize a municipality's broad power to regulate business operations to promote the health, safety and welfare of children. NIMLO, therefore, urges the reversal of the Texas Court of Appeals' decision which conflicts with the power of the State of Texas under the Constitution of the United States as delegated by said State to the City of Dallas.

Consent to the filing of this brief has been granted by Petitioners and by Respondents. Copies of the letters granting consent have been lodged with the Court.

STATEMENT OF THE CASE

Amicus adopts the statement of the case and the facts as presented by Petitioner, City of Dallas.

SUMMARY OF THE ARGUMENT

The City of Dallas ordinance restricting those over 18 from being admitted to teenage dance halls is a constitutionally valid way to protect its children from the harm associated with allowing adults to socialize with children in dance hall environments. The age restriction is justified because of the children's vulnerability to the influence of others, their inability to make critical decisions in a mature manner and their need for the parental role in child rearing.

This Court has recently upheld reasonable restrictions on constitutionally protected rights of children which were necessary to protect them from their peculiar vulnerability to the influence of others. The Court did not require such restrictions to be the least restrictive alternatives available. Here too, the inquiry must be whether the restriction is a rational or reasonable way to achieve a significant state interest. The City's determination that restricting those over 18 from attending teen dance halls would protect vulnerable children from the influence of adults with easier access to drugs and alcohol is not unreasonable, and therefore, should be upheld.

The restriction on children's right of association with those over 18 is also justified because children lack the ability to make mature decisions. It is reasonable to conclude that allowing adults to socialize with children at dance halls could lead to children being harmed by adult violence.

The need for the parental role in child rearing also justifies restricting the ages of those who may attend teen dance halls. Parents, having insufficient time to supervise their children, are entitled to the support of Cities to help keep their children safe.

ARGUMENT

I. A CITY MAY PROHIBIT CERTAIN AGE GROUPS FROM BEING ADMITTED TO TEENAGE DANCE HALLS.

A City may regulate the activities of minors more stringently than the activities of adults. *Ginsberg v. New York*, 390 U.S. 629, 638 (1968); *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944). This is true even when the minor is attempting to engage in constitutionally protected activity. *See Carey v. Population Services International*, 431 U.S. 678, 692-93 (1977); *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 74-75 (1976).

The Court has "recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." *Bellotti v. Baird*, 443 U.S. 622, 634 (1979). Therefore, instead of requiring a compelling state interest to justify the limitation on a minor's constitutionally protected right, as the Court requires in the case of an adult, it is sufficient if the regulation rationally promotes a significant state interest. *Carey*, 431 U.S. at 693 & n.15.

With this in mind, the City of Dallas enacted an ordinance prohibiting persons older than 18 from being admitted to Class E dance halls to protect children from the detrimental influence of associating with adults in this type of environment.[1] *(Stanglin v. City of Dallas*, No. 86-8546-D, District Court of Dallas, Tex., Statement of Facts at 60-61, 83-84) (hereinafter S.F.).

[1] *Amicus* recognizes that the City's ordinance also restricts children under 14 years old from being admitted to dance halls. The City's interest in having a lower age limit for admission cannot be seriously disputed. Without such a limit young children could not be refused admission to dance halls where they would be allowed to socialize with teenagers without parental supervision. Such unsupervised interaction is not generally viewed as a desirable situation. Even in a school setting, which presents a much safer environment for children than do dance halls, young children are segregated from older ones. Many schools throughout the nation not only have separate classrooms for different age students, but have separate schools and facilities for primary school children, middle school children and high school children. This provides the two younger groups of children with a more sheltered environment, protecting them from the dangers of interacting with those above their level of maturity.

If both the upper and lower age restrictions are found to be unconstitutional, very young children would be subjected not only to the influence of teenage dance patrons, but also to harms, discussed throughout the brief, brought about by allowing adults to socialize with children in dance halls. The potential for harm to children under 14 years of age would of course be greater due to their tender years and corresponding lack of experience and judgment.

This Court has upheld other types of restrictions on children's rights in an attempt to protect them from their peculiar vulnerability to the influence of others. In *Bethel School District No. 403 v. Fraser*, 106 S.Ct. 3159 (1986) a pupil was disciplined for giving a lewd, though not obscene, speech in a public school. The Court determined that "the speech was acutely insulting to teenage girl students. . . . [and] could well be seriously damaging to its less mature audience, many of whom were only 14 years old." *Id.* at 3165. In *Hazelwood School District v. Kuhlmeier*, 108 S.Ct. 562 (1988) the Court allowed a public school principal to delete portions of a student newspaper dealing with teenage pregnancy and divorce without consulting the pupils who wrote the articles. Again, the Court relied on the school's right to ensure "that readers or listeners are not exposed to material that may be inappropriate for their level of maturity." *Id.* at 570.

Cities may also protect their vulnerable children from being influenced by ideas beyond their level of maturity as long

as the restrictions that are imposed are rationally related to achieve this end. *See Carey*, 431 U.S. at 693 & n.15. *Amicus* asserts that it is rational to draw the line at denying admission to teen dance halls to those over 18 because 18 has generally been viewed as the point at which a minor becomes an adult and has easier access than those under 18 to drugs and alcohol. (*See* S.F. at 83).

The Texas Court of Appeals suggested that supervision, rather than segregation by age, is the answer to prevent problems from arising as a result from allowing those over 18 to dance with young teenagers. According to the court, "There is no showing that the less restrictive means of supervision will be ineffectual to control the evil perceived in allowing . . . a twenty-year-old from . . . dancing with a fourteen-year-old." *Stanglin v. City of Dallas*, 744 S.W.2d 165, 169 (Tex. App. 1987).

The state court has subjected the City's ordinance to an incorrect standard of review. The determination of whether a certain action is rationally or reasonably related to the interest in question does not take into consideration whether there are less restrictive alternatives.[2] *Amicus* asserts, therefore, that because it is not unreasonable to assume that prohibiting adults from socializing with children at dance halls will keep the children safe from detrimental influences, the ordinance is constitutional.

Even if the state court was correct in requiring the least restrictive alternative, supervision is not a realistic alternative.

[2]See *Hazelwood*, 108 S.Ct. at 572, in which the Court determined "that the principal's decision to delete two pages of [the student newspaper], rather than to delete only the offending articles or to require that they be modified, was reasonable under the circumstances as he understood them."

According to Respondent, only one to five percent of the children's parents come to the dance hall to pick up their children or to spend time watching them. (S.F. at 42). While this ratio may be satisfactory in a school environment, it is not sufficient in the dance hall context. In a school setting, the adults in charge are present during the entire activity and are responsible for all the children present. The few parents that come to dance halls, for however long they choose to stay, are there primarily to watch over their own children. This leaves at least 95% of the children without parental supervision. Of course, there are a number of uniformed guards present to help keep the children safe from those attempting to break house rules or engage in blatantly illegal or sexual activities. (S.F. at 13, 22-23) They are powerless, however, to prevent adults from trying to influence 14-18 year olds to engage in activities which, although not illegal, are "inappropriate for their level of maturity." *Hazelwood*, 108 S.Ct. at 570.

The City's age restriction for admission to Class E dance halls may also be jusitifed because of the children's "inability to make critical decisions in an informed, mature manner." *Bellotti*, 443 U.S. at 634. This rationale has been used to uphold a children's curfew ordinance against allegations that it violated the children's freedom of association for social purposes. In *Bykofsky v. Borough of Middletown*, 401 F.Supp. 1242 (M.D. Pa. 1975), *aff'd mem.*, 535 F.2d 1245 (3rd Cir. 1975), *cert. denied*, 429 U.S. 964 (1976), the court found that "[b]ecause of their lack of mature judgment, minors are subject to the continuing control and supervision of parents or guardians until they become of age or are emancipated." *Id.* at 1256. Noting the many activities which minors may be prohibited from engaging in, such as "the fundamental right to vote, to enlist in the military forces, to contract, to operate

motor vehicles, to purchase or consume alcoholic beverages, to work at certain jobs, or to marry without parental consent," the court determined that the municipality's "legitimate interest in protecting the moral, emotional, mental, and physical welfare of the minor" justified preventing minors from being out on the streets past curfew hours. *Id.* at 1256-57.

Should the age limitation be removed from Class E dance halls many of the problems associated with allowing youths to assemble past curfew hours could become dance hall problems. For example, a significant problem associated with youths congregating in public places at night is that they may be harmed or inflict harm to those in the neighborhood. *See Bykofsky*, 401 F. Supp. at 1255-57. While dance halls do provide some supervision, this has not stopped adults and teenagers from being harmed while in attendance at them.[3] Regardless of whether the City of Dallas can point to such problems at its licensed clubs does not mean that it is powerless to protect its children from associated nighttime violence.[4]

It has been suggested by the Texas Court of Appeals, however, that "[i]t would be incongruous to permit children to make [the] critical decision [to have an abortion] while forbidding them from choosing dance partners over the age of

[3]In Washington, D.C., reports of teenagers and adults being killed or wounded at such clubs are becoming commonplace. *See* Washington Post, November 3, 1988. ("In June, an 18-year-old man was shot to death outside [a] club. Two teenagers were seriously wounded in July. And last Thursday [a 19-year-old woman] was shot in the head when she was caught in the crossfire between rival drug dealers who opened fire at each other in a crowd of several hundred people outside the club. . . .")

[4]*See City of Renton v. Playtime Theatres, Inc.*, 106 S.Ct. 925, 931 (1986) in which the Court held that "The First Amendment does not require a city, before enacting [an] ordinance, to conduct new studies or produce evidence independent of that already generated by other cities so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses."

eighteen." *Stanglin*, 744 S.W.2d at 170. The state court has failed to appreciate that the decision to abort a fetus is "a constitutional right of unique character." *Bellotti v. Baird*, 443 U.S. 622, 650 (1979).

While it is not disputed that a minor's freedom to associate and right to privacy are constitutionally protected, constitutional rights of minors are subject to restrictions which rationally promote a significant state interest. *See Carey*, 431 U.S. at 693 & n.15. In deciding whether a restriction meets this standard, the Court has considered the alternatives available to minors to achieve the desired result. In *Bellotti* the Court recognized that

> The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. . . . A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Id. at 642.[5]

Just like the decision of when to marry, a minor's decision of whom to dance with may be restricted because options are available to those seeking to dance with persons over 18 years old. (*See* S.F. at 104). A minor could choose to attend school, community or church sponsored dances or give a dance party at home. Alternatively, a minor could choose to rollerskate

[5]Justice Stevens, concurring in *Carey*, also noted that "[t]he options available to the already pregnant minor are fundamentally different from those available to nonpregnant minors. . . . I could not agree that the Constitution provides the same measure of protection to the minor's right to use contraceptives as to the pregnant female's right to abort." *Carey*, 431 U.S. at 713 (Stevens, concurring).

with someone over 18[6] or could choose "simply to postpone" dancing with those over 18 until he or she is old enough to dance at adult dance halls.

Finally, the City may restrict children's right of association with those over 18 because the ordinance is supportive "of the parental role in child rearing." *Bellotti*, 443 U.S. at 634. In *Ginsberg v. New York*, 390 U.S. 629 (1968) the Court found that "'[w]hile the supervision of children . . . may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation[s].'" *Id.* at 640, quoting *People v. Kahan*, 15 N.Y.2d 311, 312, 206 N.E.2d 333, 334 (N..Y. 1965). The Court determined, therefore, that the state could prohibit the sale of "girlie" magazines to minors, which it could not have prohibited adults from buying, because the state "could properly conclude that parents and others . . . who have th[e] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." 390 U.S. at 639.

The Texas Court of Appeals determined, however, that the City's age restriction "inhibits, rather than promotes, the parental role in child-rearing," finding it to be "primarily the responsibility of the parent, not the City, to tell the minor how old his dance partner may be." *Stanglin v. City of Dallas*, 744 S.W.2d 165, 170 (Tex.App. 1987). The City is not contesting that this is the primary responsibility of the teenagers' parents. Unfortunately, however, whether due to the breakdown of the traditional family unit or the need of both parents to work

[6]Respondent has admitted that association prohibited by the ordinance in the dance hall may take place a few steps away in the roller skating rink. (*See* S.F. at 67). This situation provides minors with a choice as to whether they want to associate with adults at Respondent's place of business.

outside of the home, parents are left with little time for the supervision of their children's after-school activities and associations. The City, in an attempt to protect the welfare of its children, has enacted this age restriction on admission to teenage dance halls so as to allow children a safe place to assemble. (S.F. at 55). In light of the City's "transcendent interest in protecting the welfare of children" and "the knowledge that parental control or guidance cannot always be provided," the City has acted in a reasonable manner by enacting an ordinance which supports parents in their child rearing role.

CONCLUSION

For the foregoing reasons it is urged that this Court reverse the decision of the Texas Court of Appeals and uphold the Petitioner's ordinance as a constitutional exercise of the City's power to protect the welfare of its children.

Respectfully submitted,

WILLIAM H. TAUBE
Corporation Counsel
of Chebanse
359 E. Hickory
P.O. Box 51
Kankakee, IL 60901

MARVA JONES BROOKS
City Attorney
Department of Law
1100 South Tower
One CNN Center
Atlanta, GA 30303-2705

DOUGLAS N. JEWETT
City Attorney
Municipal Building
Tenth Floor, Law Department
Seattle, WA 98104

WILLIAM I. THORNTON, JR.
City Attorney
101 City Hall
Durham, NC 27701

FRANK B. GUMMEY, III
City Attorney
City Hall, Suite 213
P.O. Box 551
Daytona Beach, FL 32015

ROY D. BATES
City Attorney
City Hall
P.O. Box 147
Columbia, SC 29217

ROBERT J. ALFTON
City Attorney
A-1700 Hennepin County
Government Center
Minneapolis, MN 55487

JAMES K. BAKER
City Attorney
600 City Hall
Birmingham, AL 35203

FREDERICK D. COOKE
Corporation Counsel
Government of D.C.
District Building
Washington, D.C. 20004

JOSEPH N. de RAISMES
City Attorney
P.O. Box 791/1777 Broadway
Boulder, CO 80306

ROBERT J. MANGLER
Corporation Counsel
1200 Wilmette Avenue
Wilmette, IL 60091

NEAL E. McNEILL
City Attorney
200 Civic Center
Room 316
Tulsa, OK 74103

JOSEPH I. MULLIGAN
Corporation Counsel
615 City Hall
1 City Hall Square
Boston, MA 02201

DANTE R. PELLEGRINI
City Solicitor
313 City-County Building
Pittsburgh, PA 15219

CLIFFORD D. PIERCE, JR.
City Attorney
Room 314, City Hall
Memphis, TN 38103

BENJAMIN L. BROWN
Counsel of Record
CHARLES S. RHYNE
Of Counsel
JAN MAJEWSKI
RACHEL S. ULLMAN
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 466-5424

Attorneys for National Institute of Municipal Law Officers as Amicus Curiae

November 1988

AMICUS CURIAE

BRIEF

No. 87-1848 (6)

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

CITY OF DALLAS, *et al.*,
Petitioners,
v.
CHARLES M. STANGLIN, Individually and d/b/a/ Twilight Skating Rink,
Respondents.

On Writ of Certiorari to the Texas Court of Appeals for the Fifth Judicial District of Texas in Dallas

---

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE U.S. CONFERENCE OF MAYORS, NATIONAL GOVERNORS' ASSOCIATION, INTERNATIONAL CITY MANAGEMENT ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

TYLER A. BAKER
JEFFREY S. LEVINGER
RONALD D. KERRIDGE
LYNDON F. BITTLE
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL
200 Crescent Court
Suite 1500
Dallas, Texas 75201
(214) 855-3000
Of Counsel

BENNA RUTH SOLOMON
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., N.W.
Suite 349
Washington, D.C. 20001
(202) 638-1445
Counsel of Record for the Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Pursuant to Rule 36.3 of the Rules of this Court, *amici* respectfully move for leave to file the attached brief *amicus curiae* in support of petitioners. Petitioners have consented to the filing of this brief; their letter of consent has been filed with the Clerk. This motion is made necessary because respondents' counsel has not responded to our requests by letter and telephone for consent.

The *amici*, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.

Respondents, who operate a dance hall and a skating rink on the same premises, challenged on due process, equal protection, and First Amendment grounds, an ordinance of the City of Dallas that restricts admission to "Class E" dance halls to children between the ages of fourteen and eighteen, and limits the hours of operation of such halls. The trial court upheld the ordinance, but the court of appeals reversed in part. The court of appeals sustained the hours restriction but held the age limitation unconstitutional on the ground that the City could have achieved its stated purposes in a manner less restrictive of children's right of "social association."

This case is of concern to *amici* because it restricts the core right of state and local governments to regulate the conduct of minors in the public interest. Concern for the conduct and special status of juveniles is reflected in numerous laws restricting their activities: laws that require school attendance by children; laws that prohibit the sale of alcohol and tobacco products to minors; and laws that restrict their admission to various places of adult amusement, such as "adult" bookshops, motion picture theaters, bars—and dance halls. The lower court's loose analysis recognizes an ill-defined but obviously expansive right of "social" association that is unsupported either by the text of the Constitution or by this Court's decisions.

Among today's most critical problems facing governments at all levels—local, state, and federal—are rising teenage sexual activity and pregnancy, drug and alcohol use, runaways, violence, and crime. Lawmakers in the City of Dallas have determined that a social setting, like Class E dance halls, where minors can congregate off the streets and away from more mature young adults, should be made available. This approach will not, of course, solve all the problems involving children, and it is certainly not the only reasonable approach; but the judgment below stands as an obstacle to the creativity of state and local governments struggling with these most difficult and complex issues.

Amici submit that the decision below is wrong. Because this Court's decision will have a direct effect on matters of prime importance to *amici* and their members, *amici* seek leave to file this brief to assist the Court in its resolution of the case.

Respectfully submitted,

TYLER A. BAKER
JEFFREY S. LEVINGER
RONALD D. KERRIDGE
LYNDON F. BITTLE
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL
200 Crescent Court
Suite 1500
Dallas, Texas 75201
(214) 855-3000
Of Counsel

BENNA RUTH SOLOMON
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., N.W.
Suite 349
Washington, D.C. 20001
(202) 638-1445
Counsel of Record for the Amici Curiae

November 17, 1988

QUESTION PRESENTED

Whether a City infringes a constitutionally protected right of association by licensing a special category of public dance hall restricted to minors from fourteen to eighteen years of age.

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INTEREST OF THE *AMICI CURIAE*

The interest of *amici* is set forth in the motion accompanying this brief.

STATEMENT

This case began as an action by a dance hall operator to challenge two provisions of the Dallas City Code regulating "Class E" dance halls. Section 14-8.1 generally restricts admission to Class E dance halls to children between the ages of fourteen and eighteen. The ordinance makes exceptions for parents or guardians of children in the dance hall, employees of the dance hall, and government employees in the performance of their duties. Section 14-5(d)(2) limits the hours of operation of dance halls when school is not in session to between 1:00 p.m. and midnight daily.

In 1985, City lawmakers authorized Class E dance halls in response to requests for teen dance halls and after discussions with citizens and dance hall operators. Transcript of Hearing in *Stanglin v. City of Dallas*, No. 86-8546-D (Dallas Cty. D. Ct. July 8, 1986), at 54-55. As the evidence at trial disclosed, the purpose was to provide a place where children could socialize with each other but not be subjected to the influence of older teenagers and young adults (*id.*). As enacted, the ordinance restricted admission to those between fourteen and seventeen. It was amended to raise the maximum age to eighteen (*id.* at 81).

The trial court sustained both provisions against challenges under the First Amendment and the Due Process and Equal Protection Clauses. The court of appeals, however, found First Amendment violations in the age restriction. The court held that the fundamental right of association included social association (citing *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965)), which could be restricted only on the showing of a compelling interest and only by the least restrictive means. Although recognizing that the City's power to control the conduct of children was broader than its authority over adults, the court nonetheless found the age restriction overbroad because of its view that the City's purposes may be

achieved in ways that are less intrusive on minors' freedom to associate and because the ordinance intruded on the parental role in child-rearing.

SUMMARY OF ARGUMENT

There are many types of associations, but only a very limited subset of the total are entitled to protection under the Constitution of the United States. The court below erred because it failed to look behind the word "association" to the constitutional source for this Court's decisions protecting associations.

This Court has recognized two distinct types of associational interests protected by the Constitution. The first concerns associations that are involved in activities entitled to protection under the First Amendment. The second involves protection under the Due Process Clauses of the Fifth and Fourteenth Amendments of associations that are particularly intimate and central to our culture, primarily family relationships.

The court below found that the age restrictions on admission to Class E dance halls in Dallas infringed a right of "social association." The only connection between this "right" and the decisions of this Court is the word "association." The ordinance does not threaten any protected First Amendment rights because the social contacts at the teenage dance halls have neither an expressive purpose nor effect. Those casual contacts are also far removed from the intimate and continuing associations protected by this Court under substantive due process. The right recognized by the court of appeals is a free-floating right of personal autonomy, a right to do what one wants with whom one wants. This Court has never recognized such a broad right and should not do so in this case.

Even if the challenged ordinance affected a constitutionally protected right, the court of appeals erred in

holding it unconstitutional. It is necessary to consider the nature and extent of the interference with a right of association. The effect of the ordinance on associational interests is marginal, at most. Dallas has not attempted to forbid relationships between teens and older individuals, but attempts only to control one of a vast number of recreational opportunities available to teenagers. Moreover, the ordinance is entitled to special deference because of the City's strong interest in the healthy development of its children. The allegedly less restrictive alternatives suggested by the court of appeals are unrealistic on their face and would preclude state and local governments from addressing the serious problems facing young people today.

ARGUMENT

I. THE CITY'S LICENSING ORDINANCE DOES NOT INFRINGE CONSTITUTIONALLY PROTECTED ASSOCIATIONAL RIGHTS.

Viewed in isolation, it is hard to be against a right of "social association." Although the precise meaning of the phrase does not leap immediately to mind, it sounds like a good thing. The issue before this Court, however, is whether the Constitution of the United States forbids a City from creating a place where teenagers can dance without the influence of older people other than their parents. In an opinion that graphically illustrates the danger of a mechanical application of labels, the court of appeals held that teenagers have a "social association" right to be subjected to such influences. Although this Court has protected certain types of associations, the rationales of those opinions do not justify the court of appeals' decision.

This Court's opinions in *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), and *Board of Directors of Rotary Int'l v. Rotary Club*, 107 S.Ct. 1940 (1987), set out a comprehensive test for determining whether an

associational interest is entitled to constitutional protection. In *Roberts*, the Court surveyed previous case law and identified "two distinct senses" in which freedom of association had been protected, which were termed the "freedom of intimate association" and the "freedom of expressive association." 468 U.S. at 617-18.

We discuss each of these two rights below and demonstrate that the City's ordinance does not infringe either. The decision of the lower court rests upon a substantial expansion of associational rights to include an amorphous category of "social" association. Such an expansion blurs the distinctions between the two types of associational rights, has no basis in constitutional text or precedent, and should be rejected by this Court. We urge the Court not to cut the notion of "freedom of association" loose from its moorings in the Constitution. To create such a fundamental interest without identifiable boundaries would unduly restrict the ability of governments at all levels to fulfill their basic regulatory functions.

A. The Ordinance Does Not Infringe Expressive Association.

The First Amendment does not explicitly protect a right of association. Nevertheless, the "freedom of expressive association" is firmly grounded in the First Amendment, deriving from the recognition that, as a practical matter, "an individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Roberts*, 468 U.S. at 622. Thus, the Court has invalidated statutes and regulations that impinged on the right of organizations to pursue a variety of protected First Amendment activities. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (exercising fundamental rights of expression); *In re Primus*, 436

U.S. 412 (1978) (redressing grievances through access to courts); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981) (participating freely in the electoral process); *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87 (1982) (holding dissident political or social beliefs without fear of compelled disclosure or reprisals); *Larson v. Valente*, 456 U.S. 228 (1982) (exercising religious beliefs without interference by the State). In determining the extent to which a particular group can claim protection under the "expressive association" rubric, this Court has assessed the degree of the group's involvement in expressive activities, such as advocacy of public or private viewpoints, pursuit of legal rights, or involvement in public service activities. *See, e.g., New York State Club Ass'n v. City of New York*, 108 S.Ct. 2225, 2234 (1988); *Rotary*, 107 S.Ct. at 1947.

The Dallas licensing ordinance clearly does not infringe any protected right of expressive association. Indeed, unlike the cases involving the Jaycees, the NAACP, or the Socialist Workers Campaign Committee, there is here no "association" at all in the sense of an organized group with a collective identity. There is no membership policy with which the ordinance interferes; the only criterion for membership in this association, other than the ability and willingness to pay the admission fee, is the age limitation imposed by the ordinance itself. Thus, what respondents assert on behalf of their patrons and older potential patrons is not the right to join with others to form an association, but simply the right to be patrons of the same business establishment at the same time. Such attenuated and sporadic connections of people who come together briefly as dance hall customers fall far short of the attachments protected as an association under the First Amendment.

Not only is there no association, there is also no evidence of any expressive purpose affected by the ordinance.

Respondents' customers do not come together for the purpose of exercising rights expressly, or even impliedly, recognized by the First Amendment. Unlike the Rotary Club, there is here no attempt to "take positions on 'public questions'"; nor is there an effort to "engage in . . . commendable service activities" or encourage "high ethical standards in all vocations, goodwill, and peace." *Rotary*, 107 S.Ct. at 1947. While dancing may be, in the broadest sense, a form of expression, this Court has not been inclined to paint in such broad strokes. All conduct has some expressive element, but not all conduct is protected by the First Amendment.

B. The Ordinance Does Not Infringe Intimate Or Private Association.

The second type of protected associational interest recognized in *Roberts* differs fundamentally from the expressive association protected under the First Amendment. Protection of "intimate" association derives from personal liberty interests under the Due Process Clauses of the Fifth and Fourteenth Amendments.

Because of the absence of clear guidance in the text of the Constitution, the Court has invoked this substantive due process right sparingly, and only to protect certain highly personal relationships because of their "critical role in the culture and traditions of the Nation." *Roberts*, 468 U.S. at 618-19. Most notable of these relationships "are those that attend the creation and sustenance of a family." *Id.* at 619 (citing, *inter alia*, *Zablocki v. Redhail*, 434 U.S. 374 (1978) (right to marry); *Carey v. Population Services Int'l*, 431 U.S. 678 (1977) (minor's right of access to contraceptives); *Moore v. City of East Cleveland*, 431 U.S. 494 (1977) (plurality opinion) (protection of "extended family" relationships); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (married couple's right to use contraceptives)).

In *Roberts*, the Court attempted to distill the essential elements that will give rise to intimate association pro-

tected under substantive due process. The protected associations are characterized by "relative smallness, a high degree of selectivity . . ., and seclusion from others in critical aspects of the relationship." 468 U.S. at 620; *see also Rotary*, 107 S.Ct. at 1946. Even this language, taken out of context, does not completely capture the extraordinarily limited character of the cases in which this Court has struck down laws for infringing intimate associational rights. Plainly, the ordinance at issue here affects no associational interest sufficiently intimate to invoke this doctrine.

Respondents claim an associational right to the interactions that would occur if the dance hall were open to all persons without regard to age. Such an "association," however, obviously would lack any of the elements of size, purpose, or selectivity that give rise to constitutional protection.[1] More important, the right to attend a dance hall without age limits simply cannot be equated with the right to decide whether to bear a child, the right to choose one's spouse, or even the right to live with family members of one's choosing. To do so is to cheapen these fundamental rights.

C. The Constitution Does Not Recognize A Right Of "Social Association."

The lower court's opinion demonstrates the danger of unthinking expansion of associational interests to encompass an independent, fundamental right of "social association." If such an interest is infringed here, it is difficult to imagine its limits. If the State sponsors or licenses a camping facility, does it infringe a fundamental right

[1] Respondents have not asserted that the intimate associational rights of any particular couple, with one partner under 18 and the other over 18, have been affected by this ordinance. Even assuming that such a hypothetical relationship could surmount the formidable hurdles posed by the *Roberts* test, any impairment caused by the City's ordinance of the couple's purported right to maintain their "association" would be negligible.

of association by setting aside one week for teens, one week for young adults, one week for families, and another week for young children? Are kiddie pools or adult swim times at a municipal pool unreasonable impairments of the constitutional right to swim with whomever you like whenever and wherever you desire? Although the answers are plainly "no," the court of appeals' opinion casts doubt on the permissibility of such reasonable regulation.

The court of appeals relied in substantial part on dictum from *Griswold*, 381 U.S. at 483, in asserting: "The right to freely associate is not limited to 'political' assemblies, but includes those that 'pertain to the *social*, legal, and economic benefit' of our citizens." Pet. App. A-4 (emphasis added by lower court). The court's error was likely the result of significantly truncating the passage quoted from *Griswold*. Describing the "penumbra" of the First Amendment, Justice Douglas actually wrote: "[W]e have protected forms of 'association' that are not political in the customary sense but pertain to the social, legal, and economic benefit of the members." *Griswold*, 381 U.S. at 483 (citing *NAACP v. Button*, 371 U.S. 415, 430-31 (1963)).[2] In context, this passage recognizes nothing more than the right of expressive association discussed above: the First Amendment protects speech other than political speech, and the right of expressive association extends to groups involved in such expressive

[2] In *Button*, this Court cited its previous protection of association for the advancement of ideas and beliefs, organization of workers' unions, association to solicit government to pass and enforce certain laws, and anonymous membership in political parties. *Button*, 371 U.S. at 430-31. *Button* stated that NAACP-assisted litigation made possible "the distinctive contribution of a minority group to the ideas and beliefs of our society." *Id.* at 431. Contrary to the court of appeals' reading, *Button* in no way justifies interpreting the dictum of *Griswold* to create protection for an amorphous right of "social association" unconnected to any First Amendment activity.

activities. The quotation from *Griswold*, however, provides no support for a right of "social association" that has no connection to First Amendment concerns.

In addition to *Griswold*, the court of appeals relied on a line of Fifth Circuit cases recognizing a right of "social association." Pet. App. A-4 to A-5 (citing *Johnson v. City of Opelousas*, 658 F.2d 1065 (5th Cir. Unit A Oct. 1981); *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029 (5th Cir. 1980), *rev'd in part*, 455 U.S. 283 (1982), *on remand*, 713 F.2d 137 (5th Cir. 1983); *Sawyer v. Sandstrom*, 615 F.2d 311 (5th Cir. 1980)). To the extent that those cases support a constitutional right to social association, they are inconsistent with this Court's subsequent decisions.

Of these cases, the most analogous to the facts here is *Aladdin's Castle*. There, the Fifth Circuit held that an ordinance prohibiting persons younger than seventeen from entering coin-operated amusement arcades without a parent or guardian impermissibly trammelled minors' rights of association. The Fifth Circuit candidly stated that this Court "has never ruled directly on the application of the right of association in a social context" such as the one at issue there. 630 F.2d at 1041.[3] It nevertheless found a right to associate at amusement arcades based in large part on dictum in *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974). In *Gilmore*, this Court struck down racial discrimination in use of city recreational facilities as a denial of equal protection; in

[3] This Court reversed the Fifth Circuit's finding of vagueness in the City of Mesquite's licensing ordinance, and remanded the freedom of association claim for a determination whether the Fifth Circuit's holding was based on adequate and independent state constitutional grounds. 455 U.S. at 295. On remand, after two hearings, the Fifth Circuit held that while it probably could have based its earlier holding on independent state grounds, it had not, in fact, done so. 713 F.2d at 139. The present case thus provides this Court an opportunity to resolve the constitutional issue left open in *Aladdin's Castle*.

passing, the Court suggested that racially discriminatory private clubs would be entitled to some "associational rights" to preserve their choice of members. The underlying purpose of freedom of association, the Court observed, was to "produce the diversity of opinion that oils the machinery of democratic government and insures peaceful, orderly change." *Gilmore*, 417 U.S. at 575. This dictum in *Gilmore* addresses at most the sort of associational rights at issue in *Roberts* and *Rotary*. It does not support a free-wheeling right of social association cut off from any roots in the First Amendment.

When *Aladdin's Castle* was decided, the Fifth Circuit did not have the advantage of the *Roberts* analysis and subsequent decisions of this Court. The right of association at coin-operated amusement centers found in *Aladdin's Castle* is wholly unsupportable after *Roberts*. *Roberts* sets out, as the two poles of the spectrum of relationships, the intimate association of marriage and the choice of one's fellow employees. *See Roberts*, 468 U.S. at 620. Chance association at an amusement center (or, as here, a dance hall) is even less private or intimate than interaction between employees. Nor does the activity of playing arcade games constitute expression protected by the First Amendment. A right of social association that encompasses video palaces, dance halls, and perhaps even campgrounds and swimming pools is in reality a right of personal autonomy that knows no boundaries and can tolerate no governmental regulation. This Court should reject such an unprincipled expansion of the categories of protected associational interests.

D. Any Infringement Of Associational Interests Is Minimal.

The mere identification of associational rights does not end the constitutional inquiry. This Court has recognized that the extent to which a challenged regulation affects protected activities is highly relevant to its validity. *See, e.g., Lyng v. International Union, UAW*, 108 S.Ct. 1184,

1189 (1988) ("the statute at issue does not 'directly and substantially interfere' with appellees' ability to associate" for the purpose of "asserting their lawful rights"); *Rotary*, 107 S.Ct. at 1947 (requirements of statute did not "affect in any significant way the existing members' ability to carry out their various purposes"). Thus, however the associational interest asserted in this case is characterized, the effect of the ordinance on that interest must be examined.

The City's licensing ordinance impinges on associational rights, if at all, in only the most minimal way. The ordinance does not require dance halls to admit anyone they might wish to exclude, as was the case in *Roberts*, *Rotary*, and *New York State Club Ass'n*, and it does not impose particular partners on dance hall customers. Nor does the ordinance forbid all contact between teens and older people. At the very most, the City has failed to sanction an additional place where such interactions might occur.

In fact, the licensing ordinance is an expansion of associational opportunities rather than a restriction. Prior to 1985, Dallas licensed dance halls only for the use of persons eighteen and over. In response to requests for dance halls open to younger teenagers, and after discussions between city officials and representatives of the public and proprietors, including respondents, the City Council agreed to license a new class of dance halls, which would be limited to persons between the ages of fourteen and seventeen.[4] Only if this Court were to hold that the City is constitutionally obligated to open its licensed dance halls (and, presumably, other commercial establishments) to all citizens, without regard to age limitations of any kind, could this licensing ordinance fairly be characterized as a restriction rather than an enhancement of minors' access to dance hall facilities.

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[4] The ordinance has since been amended to increase the maximum age to 18 (see Transcript of Hearing at 81).

II. THE CITY'S LICENSING ORDINANCE IS CAREFULLY TAILORED TO SERVE THE STRONG GOVERNMENTAL INTEREST IN PROTECTING AND PROVIDING SOCIAL OPPORTUNITIES FOR CHILDREN.

The court of appeals not only erroneously recognized a constitutionally protected right of social association, but also erred by underestimating the well-established interest of governments in protecting and providing opportunities for children. In so doing, the court impermissibly substituted its own judgment for that of the Dallas City Council.

A. The City Has A Strong Interest In Protecting Children.

The Dallas ordinance reflects the important governmental interest in protecting and providing appropriate social opportunities for minors. It has long been established that "[i]t is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens." *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944). The provision of these safeguards and opportunities is particularly critical in this modern age. Minority "is a time and condition of life when a person may be most susceptible to influence and to psychological damage." *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). Particularly "during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *Bellotti v. Baird*, 443 U.S. 622, 635 (1979). Because parental control or guidance cannot continuously be provided to such minors, the State's independent interest in the well-being of its youth becomes especially significant.

Perhaps *Prince* best illustrates the type of governmental interest from which the Dallas ordinance arose.

There, the Court upheld, over claims of infringement upon religious freedom, a statute prohibiting minors from selling newspapers or other merchandise in the streets or other public places. While conceding that the statute would have been invalid as applied to adults, the Court held:

> The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of *public activities* and in matters of employment. . . . Among evils most appropriate for such action are the crippling effects of child employment, more especially in public places, *and the possible harms arising from other activities subject to all the diverse influences of the street.* It is too late now to doubt that legislation appropriately designed to reach such evils is within the state's police power,

321 U.S. at 168-69 (emphasis added).

Like the statute in *Prince*, Dallas' teen dance hall ordinance—as well as other similar ordinances—reflects the government's strong interest in fostering "the healthy, well-rounded growth of young people into full maturity as citizens." *Prince*, 321 U.S. at 168. Today's teens are confronted with a wide variety of temptations—some illegal, some immoral, and some dangerous—but many of them fostering an unchecked, unhealthy sort of "maturity." By creating a "safe harbor" where teens may socialize with their peers without outside influences, the Dallas ordinance is a laudable attempt to channel the moral, emotional, and physical choices facing its youth. The ordinance is a positive good for those teens and parents who desire such an environment, and reflects the notion that "there may be benefit in a special, legally protected growing period that is a transition to a fully realized adult status." F. Zimring, *The Changing Legal World of Adolescence* 26 (1982). Whether the City's interest in the well-being of its children can be accomplished through other means, and who properly

makes the choice among different means, are discussed below, but the *existence* of this strong interest cannot be disputed.

B. Regulations Protecting Children Receive Greater Deference Than Similar Regulations Not Supported By Such An Interest.

Both the court below and the Fifth Circuit in *Aladdin's Castle* required Cities to show a "compelling" interest for regulating the age of patrons at public amusements. There is no justification, however, for subjecting regulations aimed at the protection of children to such a rigorous standard.[5] Because of society's strong interest in the development of its children, this Court "long has recognized that the status of minors under the law is unique in many respects." *Bellotti v. Baird*, 443 U.S. at 633. Among the justifications for this unique status are

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[5] The degree of scrutiny that would be applied to this case if children's interests were not implicated would depend on the Court's assessment of the nature of the purported associational interest and the extent of infringement of that interest. Where a regulation substantially interferes with either expressive or intimate associational interests, the regulation is subject to careful scrutiny by the Court. As the Court stated in *Roberts*, "[i]nfringements on [the right to associate] may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms." 468 U.S. at 623.

Where, as here, neither intimate association nor expressive association is seriously implicated, state regulation of group activity is within the authority of government, so long as the regulation " 'is rationally related to a legitimate governmental interest.' " *Lyng v. International Union, UAW*, 108 S.Ct. 1184, 1192 (1988). As Justice O'Connor observed in her concurrence in *Roberts*, the "Constitution does not guarantee a right to choose employees, customers, suppliers, or those with whom one engages in simple commercial transactions, without restraint from the State." 468 U.S. at 634; *see also id.* at 620 (majority opinion) (Constitution imposes few constraints on State's power to impair an individual's ability to choose fellow employees).

"the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing." *Id.* at 634.

The Court has recognized the unique status of minors by holding in a variety of contexts that "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults." *Prince*, 321 U.S. at 170. As such, restraints on the freedom of minors may be justified even though similar restraints on adults would be unconstitutional. *Carey*, 431 U.S. at 706. In addition, the State may regulate the conduct of adults, when it acts in the interest of children, in ways it could not regulate in the absence of such an interest. *Ginsberg v. New York*, 390 U.S. 629 (1968).

Ginsberg is a good example of this enhanced deference to the State's interest in regulating children. There, the Court upheld the constitutionality of a criminal obscenity statute prohibiting the sale to minors of material defined to be obscene based on its appeal to them rather than adults. Recognizing the State's interest in seeing that children are "safeguarded from abuses," the Court formulated the "only question remaining" as "whether the New York Legislature might rationally conclude, as it has, that exposure to the materials proscribed by [the statute] constitutes such an 'abuse.'" 309 U.S. at 640-41. Similarly, the Court in *Schall v. Martin*, 467 U.S. 253 (1984), tested the constitutionality of a statute authorizing the pretrial detention of juvenile delinquents by asking whether the statute "serve[d] a legitimate state objective." *Id.* at 263-64. Most recently, in *Hazelwood School District v. Kuhlmeier*, 108 S. Ct. 562 (1988), the Court held that educators do not infringe the First Amendment rights of high school students by exercising editorial control over the style and content of student speech in school-sponsored expressive activities "so long

as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 571.[6]

Deference to government efforts to protect children is particularly appropriate here, where the minors' claim to social association implicates a "right" that is considerably less fundamental than the First Amendment rights involved in *Ginsberg* and *Hazelwood* or the due process rights in *Schall*. In short, the City should not be required to show a "compelling" interest (even though it plainly has) to justify what is at most a negligible restriction on minors' associational activities.

C. The City's Licensing Ordinance Was Carefully Crafted To Serve Its Purpose.

Although respondents offered no evidence of any alternatives to the City's ordinance that would be less restrictive, the court of appeals held that the ordinance was "overbroad" and was more intrusive than necessary to serve the City's interest in protecting and providing opportunities for its children. The court held, for example, that the "most direct means of protecting juveniles from detrimental influences is to apprehend and prosecute those who induce them to engage in illegal behavior, such as the unauthorized use of drugs and alcohol." Pet. App. A-6. Even a cursory examination of the opinion reveals serious flaws in this analysis.

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[6] Even in cases involving the highly protected sexual privacy rights of minors, this Court has held that a "significant" state interest "not present in the case of an adult" will suffice in lieu of a "compelling" state interest to justify the regulation. *See Carey v. Population Services Int'l*, 431 U.S. 678, 693 & n.15 (1977) (finding insufficient state interest to justify ban on sale of contraceptives to persons under 16); *Planned Parenthood v. Danforth*, 428 U.S. 52, 75 (1976) (minor has some right to abortion absent parental consent). This test was too stringent for Justice Powell, however, who argued that the correct inquiry was whether a restriction on the freedom of young people "rationally serves valid state interests." *Carey*, 431 U.S. at 707 (concurring opinion).

Recognizing that legislative bodies are primarily responsible for defining the ends to be served by governmental regulations, this Court has respected the need for approximation in choosing the means of serving them. Because "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations" (*Metropolis Theater Co. v. City of Chicago*, 228 U.S. 61, 69 (1913)), a requirement of "mathematical nicety" is inappropriate. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911); *see also Califano v. Jobst*, 434 U.S. 47, 52-54 (1977) (Congress may reasonably apply broad assumptions based on age or marital status in terminating Social Security disability benefits, even though arguably fundamental interests are affected). Thus, the Court in *Prince* noted that the State may secure the protection of its youth "against impeding restraints and dangers, *within a broad range of selection.*" 321 U.S. at 168 (emphasis added). At most, this Court has inquired only whether "significantly" less restrictive means can be applied to achieve the State's interest. *Roberts v. United States Jaycees*, 468 U.S. at 623.

Viewed in light of this deferential analysis, the court of appeals clearly has imposed an unwarranted standard that would paralyze efforts by state and local governments to address the serious problems confronting their youth. While the arrest of all the drug dealers that plague today's teens is an admirable goal, it is hardly a realistic alternative to a teen-only dance hall. Moreover, the City's interest goes beyond merely insulating its youth from illegal conduct. The ordinance also is aimed at providing at least one age-appropriate environment where teens can mingle with their peers free from untoward adult influences. Surely a City is entitled to conclude that girls of fourteen would be exposed to significant risks through contact at public dance halls with unrelated men of, for example, thirty years of age. To

the extent the ordinance also protects children from criminal influences, it works as well as if not better than punishment, which is easier said than done and can be imposed only after the damage is inflicted and the perpetrators caught.

The court of appeals also was persuaded that the Dallas ordinance "inhibited" the parental role in childrearing because it is primarily the parents' responsibility, not the government's, to decide "the age of persons with whom their children may or should associate." Pet. App. A-8. Contrary to this conclusion, the ordinance does not infringe the parental role at all, but in fact supports it. The City has not forbidden all contact between teens and adults; it has instead provided one place where parents may allow their teens to dance free from adult influences without the necessity of continuous parental supervision. The ordinance thus enhances rather than inhibits parental choices. As the Court noted in *Bellotti v. Baird*, 443 U.S. at 638-39, "[l]egal restrictions on minors, especially those *supportive* of the parental role, may be important to the child's chances for the full growth and maturity that make eventual participation in a free society meaningful and rewarding" (emphasis added).

Perhaps the worst that could be said about the Dallas ordinance and others like it is that they do not go as far as they might, providing a safe harbor only in dance halls but not in skating rinks, movie theatres, and public parks. The ordinance admittedly will not solve all problems facing children in modern society, but that is not the constitutional standard. A judge's belief that a law is of limited utility or even a bad idea is not a sufficient basis for intervention. Unless this Court is to return to the era of *Lochner v. New York*, 198 U.S. 45 (1905), it must defer to a legislative decision to "take one step at a time" in the direction of protecting and providing opportunities for its youth. *See Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955). As Justice Brandeis

aptly stated in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (dissenting opinion), "[t]o stay experimentation in things social and economic is a grave responsibility. . . . It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

CONCLUSION

For the reasons stated above, the judgment below should be reversed insofar as it invalidated Section 14-8.1 of the Dallas City Code.

Respectfully submitted,

TYLER A. BAKER
JEFFREY S. LEVINGER
RONALD D. KERRIDGE
LYNDON F. BITTLE
CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL
200 Crescent Court
Suite 1500
Dallas, Texas 75201
(214) 855-3000
Of Counsel

BENNA RUTH SOLOMON
Chief Counsel
STATE AND LOCAL LEGAL CENTER
444 North Capitol St., N.W.
Suite 349
Washington, D.C. 20001
(202) 638-1445
Counsel of Record for the Amici Curiae

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